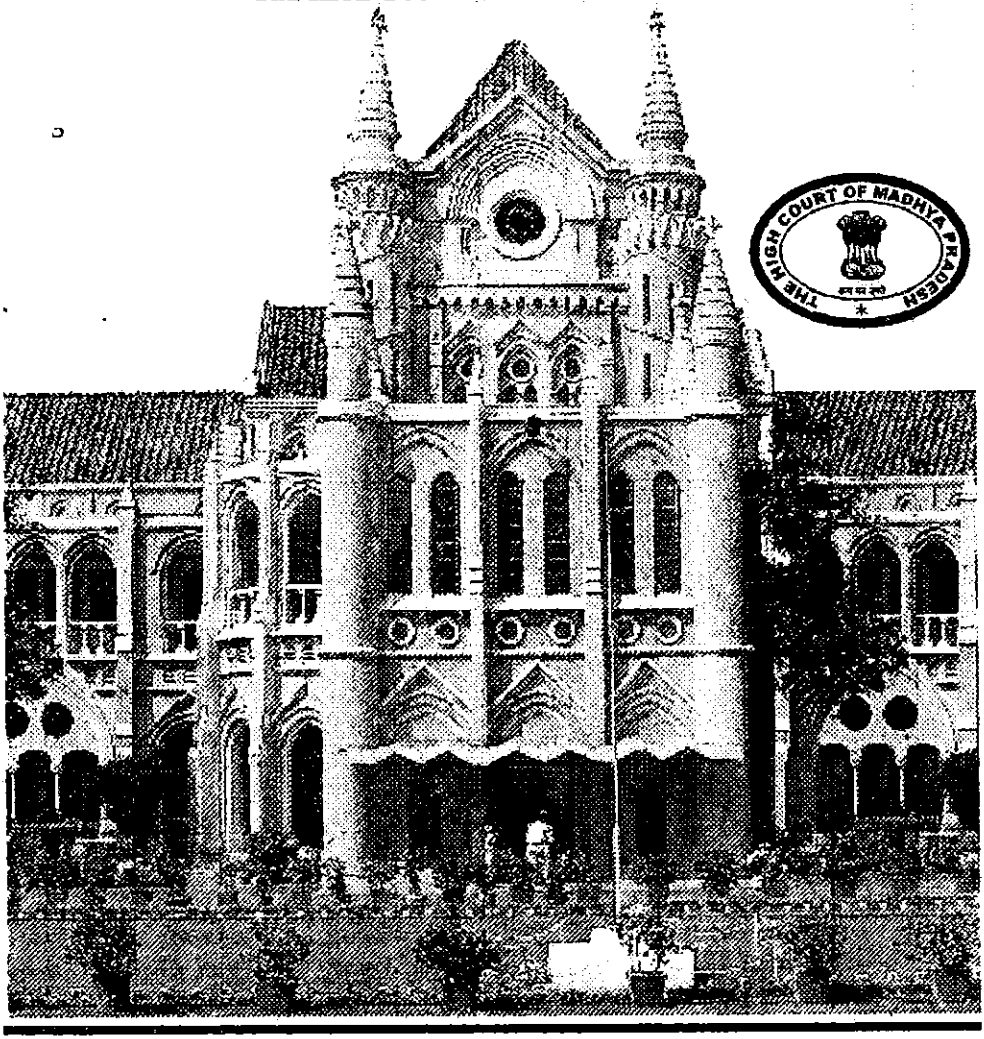
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(Note An asterisk (*) denotes Note number)

Accommodation Control Act, M.P. (41 of 1961), Sections 2(b), 12(1)(a), (c), (f), 23-J, 45 - *Appellant purchased suit property in 1996 whereas respondent was inducted as tenant by seller way back in 1978 - Appellant, a widow filed a suit before civil court for eviction on the ground of arrears of rent, denial of title and bonafide requirement - Decree granted by trial court on the ground of bonafide requirement and arrears of rent and decree affirmed by District Judge - High Court set-aside decree on the ground that civil court has no jurisdiction because appellant being a widow, 'specified landlord' within the meaning of Section 23-J of Act - Appeal before Supreme Court - Held - Definitions of 'Landlord' as contained in Section 2(b) & 23-J are different - Appellant was not a landlord within meaning of Section 23-J - Any matter which stricto sensu does not come within purview of Chapter III-A would be entertainable by civil court - Judgment passed by High Court unsustainable - Appeal allowed.* [Sulochana v. Rajinder Singh] SC ...2487

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(a) - *Landlord-tenant relationship - Rent note creating contractual tenancy of 11 months - No rent note executed thereafter - Held - After expiry of contractual tenancy, tenant still remains as tenant and becomes statutory tenant.* [Rukhmanibai Smt. (dead) through LRs. Gendalal Gupta v. Ramdayal (dead) through LRs. Ramesh] ...3194

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(a) - **See** - *Civil Procedure Code, 1908, Order 8 Rule 3 & 5* [Santosh (Smt.) v. Mohd. Sharif] ...2326

Accommodation Control Act, M.P. (41 of 1961), Sections 12(1)(a), 13(1) - ***Arrears of Rent*** - *Tenant disputing quantum of rent - Tenant is bound to deposit such sum only on fixing the interim rent by Court - Tenant depositing entire arrears of rent within one month from the date of fixation of interim rent by Court - Subsequently also rent was deposited regularly - No decree u/s 12(1)(a) could be passed.* [Bhagwati Tiwari (Smt.) v. Makhanlal Yadav] ...2352

Accommodation Control Act, M.P. (41 of 1961), Sections 12(1)(a) & 13(1) - ***Eviction*** - *Tenant failed to pay arrears of rent even after service of writ of summons - Tenant deposited part of arrears of rent when trial was coming to a close and sought condonation of delay - Rejection by trial court - Held - Trial court rightly found that the application for condonation of delay was not bona fide - Decree of eviction u/s 12(1)(a) of Act affirmed - Appeal dismissed summarily.* [Sujanmal v. Kailash Chandra Agarwal] ...3243

Accommodation Control Act, M.P. (41 of 1961), Sections 12(1)(a) & 13(1) - ***Suit for eviction was filed on the ground of arrears of rent*** - *It was the duty of tenant to deposit the rent as required u/s 13(1) of the Act - Tenant has not deposited rent as per requirement u/s 13(1) of the Act and has not filed any*

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(Note An asterisk (*) denotes Note number)

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धाराएँ 2(बी), 12(1)(ए), (सी), (एफ), 23–जे, 45 – अपीलार्थी ने विवादित सम्पत्ति 1996 में क्रय की जबकि प्रत्यर्थी किरायेदार के रूप में विक्रेता द्वारा काफी पहले 1978 में अधिवासित किया गया – अपीलार्थी, एक विधवा महिला ने बकाया किराये, स्वत्वों से इंकारी और सद्भाविक आवश्यकता के आधार पर बेदखली का वाद सिविल न्यायालय के समक्ष पेश किया – विचारण न्यायालय द्वारा सद्भाविक आवश्यकता और किराये के बकाया के आधार पर डिक्री प्रदान की गई और जिला न्यायाधीश द्वारा उसकी पुष्टि की गई – उच्च न्यायालय ने डिक्री इस आधार पर अपास्त की, कि सिविल न्यायालय को अधिकारिता नही है क्योंकि अपीलार्थी विधवा महिला होने से अधिनियम की धारा 23–जे के अर्थ में 'विनिर्दिष्ट भूस्वामी' थी – उच्चतम न्यायालय के समक्ष अपील – अभिनिर्धारित – धारा 2(बी) व 23–जे में अन्तर्विष्ट 'भूस्वामी' की परिभाषाएँ भिन्न हैं – अपीलार्थी धारा 23–जे के अर्थ में भूस्वामी नही थी – कोई मामला जो कड़े अर्थ में अध्याय 3–ए के सीमा क्षेत्र में नही आता, सिविल न्यायालय द्वारा ग्रहण किये जाने योग्य होगा – उच्च न्यायालय द्वारा पारित निर्णय स्थिर रखे जाने योग्य नही – अपील मंजूर। (सुलोचना वि. राजिंदर सिंह) --- SC 2487

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ए) – भूस्वामी–किरायेदार सम्बन्ध – किरायानामा से 11 माह की संविदात्मक किरायेदारी सृष्ट – तत्पश्चात् कोई किरायानामा निष्पादित नही – अभिनिर्धारित – किरायेदार संविदात्मक किरायेदारी की समाप्ति के पश्चात् भी किरायेदार की तरह रहता है और वैधानिक किरायेदार बन जाता है। (रूकमनी बाई श्रीमति (मृतक) द्वारा विधिक उत्तराधिकारी गेंदालाल गुप्ता वि. रामदयाल (मृतक) द्वारा विधिक उत्तराधिकारी रमेश) ...3194

स्थान नियंत्रण अधिनियम, (1961 का 41), धारा 12(1)(ए) – देखें – सिविल प्रक्रिया संहिता 1908, आदेश 8 नियम 3 व 5 (संतोष (श्रीमति) वि. मोहम्मद शरीफ) ...2326

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धाराएँ 12(1)(ए), 13(1) – बकाया भाड़ा – अभिधारी ने भाड़े की मात्रा को विवादित किया – न्यायालय द्वारा अंतरिम भाड़ा नियत किये जाने पर ही अभिधारी ऐसी रकम निक्षेप करने के लिए आबद्ध है – अभिधारी ने न्यायालय द्वारा अंतरिम भाड़ा नियत किये जाने के एक माह के भीतर सम्पूर्ण बकाया भाड़ा निक्षेपित किया – तत्पश्चात् भी नियमित रूप से भाड़े का निक्षेप किया – धारा 12(1)(ए) के अधीन कोई डिक्री पारित नहीं की जा सकती। (भगवती तिवारी (श्रीमति) वि. माखनलाल यादव) ...2352

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धाराएँ 12(1)(ए) व 13(1) – बेदखली – किरायेदार समन की तामीली होने के बाद भी बकाया किराया अदा करने में असफल रहा – जब विचारण समाप्त होने को था तब किरायेदार ने आंशिक बकाया किराया जमा किया और विलम्ब की माफी चाही – विचारण न्यायालय द्वारा नामंजूर – अभिनिर्धारित – विचारण न्यायालय ने यह उचित रूप से पाया कि विलम्ब की माफी का आवेदन सद्भावी नही था – अधिनियम की धारा 12(1)(ए) के अन्तर्गत बेदखली की डिक्री पुष्ट की गई – अपील संक्षेपतः खारिज। (सुजानमल वि. कैलाश चंद्र अग्रवाल) ...3243

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धाराएँ 12(1)(ए) व 13(1) – किराये के बकाया होनें के आधार पर बेदखली का वाद पेश – यह किरायेदार का कर्तव्य था कि अधिनियम की धारा 13(1) की अपेक्षानुसार किराया जमा करे – किरायेदार ने अधिनियम की धारा 13(1) की अपेक्षानुसार किराया जमा नही किया और विलम्ब को क्षमा करने के लिए विचारण

application for condonation of delay before trial court but filed the application before first appellate court - Held - If there were default on the part of tenant, tenant ought to have filed application forthwith before the trial court explaining the circumstances in which he could not deposit the rent - First appellate court rightly rejected the application. [Subhash Chand Jawa v. Subhash Gupta] ...2388

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(a), (c) & (f), Civil Procedure Code, 1908, Order 1 Rule 10, Order 30 - *Non-joinder of necessary party - Maintainability of suit - Suit premises rented to partnership firm and the firm or its partners not impleaded as a party - Effect - Held - A decree of eviction of the premises cannot be granted in favour of the plaintiff because the tenancy is in favour of a partnership firm, which means in favour of all the partners of the firm - Hence, the suit is not maintainable - Appeal allowed.* [Babulal Birla (Dead) Through LRs. Smt. Krishna Devi v. Ram Prakash Sharma] ...2646

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(c) - ***Denial of title*** *- Appellant purchased suit property from owner who had inducted respondents as tenant - Respondents never challenged the title of original landlords by whom they were inducted - No evidence that rent of any period was paid to appellants - If derivative title was denied by tenant then such could not be treated as ground of disclaimer of title.* [Bhagwati Tiwari (Smt.) v. Makhanlal Yadav] ...2352

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(e) - ***Bonafide requirement*** *- Plaintiff admitted that she has purchased adjoining house and has got vacated from tenant - She is living all alone in her house - Appellant failed to prove bonafide requirement - Appeal dismissed.* [Bhagwati Tiwari (Smt.) v. Makhanlal Yadav] ...2352

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - ***Bona fide requirement*** *- Pleading of alternate accommodation in plaint - Not necessary as landlord was not owner of alleged alternate accommodation at the time of institution of suit - Judgment of court below set-aside and suit for eviction decreed - Appeal allowed.* [Harvilas through L.Rs. Smt. Premlata v. M/s. Sharma Motor Transport Co.] ...3189

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - *Suit for eviction on ground of bona fide requirement of two sons - Examination of one son only - Held - It is not the law that each and every person for whose requirement suit is filed has to be examined - Judgment of court below set-aside - Suit decreed - Appeal allowed.* [Harvilas through L.Rs. Smt. Premlata v. M/s. Sharma Motor Transport Co.] ...3189

Accommodation Control Act, M.P., (41 of 1961), Section 12(1)(f) - **See** - *Civil Procedure Code 1908, Order 6 Rule 17* [Subhash Chand Jawa v. Subhash Gupta] ...2388

न्यायालय के समक्ष कोई आवेदन पेश नहीं किया बल्कि प्रथम बार आवेदन प्रथम अपील न्यायालय के समक्ष पेश किया – अभिनिर्धारित – यदि किरायेदार की ओर से व्यतिक्रम किया गया तो किरायेदार को, परिस्थितियाँ जिनमें वह किराया जमा नही कर सका, स्पष्ट करते हुए विचारण न्यायालय के समक्ष तत्काल आवेदन पेश करना चाहिए था – प्रथम अपील न्यायालय ने आवेदन उचित रूप से निरस्त किया। (सुभाष चंद जावा वि. सुभाष गुप्ता) ...2388

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ए), (सी) एवं (एफ), सिविल प्रक्रिया संहिता, 1908, आदेश 1 नियम 10, आदेश 30 – आवश्यक पक्षकार का असंयोजन – वाद की पोषणीयता – वादग्रस्त परिसर भागीदारी फर्म को किराये पर दिया गया और फर्म या उसके भागीदारों को पक्षकार नही बनाया – प्रभाव – अभिनिर्धारित – परिसर से निष्कासन की डिक्री वादी के पक्ष में प्रदान नही की जा सकती क्योंकि किरायेदारी भागीदारी फर्म के हक में है, जिसका अर्थ है फर्म के सभी भागीदारों के हक में – इसलिए वाद पोषणीय नही है – अपील मंजूर। (बाबूलाल बिरला (मृतक) द्वारा विधिक उत्तराधिकारी श्रीमति कृष्णा देवी वि. राम प्रकाश शर्मा) ...2646

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(सी) – स्वत्व से इंकारी – अपीलार्थी ने वादग्रस्त सम्पत्ति उस स्वामी से क्रय की जिसने प्रत्यर्थियों को अभिधारी के रूप में अधिवासित किया था – प्रत्यर्थियों ने मूल मकान मालिक, जिनके द्वारा उन्हें अधिवासित किया गया था, के स्वत्व को कभी चुनौती नहीं दी – कोई साक्ष्य नहीं कि किसी कालावधि का भाड़ा अपीलार्थियों को अदा किया गया – यदि व्युत्पन्न स्वत्व अभिधारी द्वारा इंकार किया गया तब यह स्वत्व से इंकारी का आधार नहीं माना जा सकता। (भगवती तिवारी (श्रीमति) वि. माखनलाल यादव) ...2352

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ई) – सद्भावी आवश्यकता – वादी ने स्वीकार किया कि उसने लगा हुआ मकान क्रय कर लिया है और अभिधारी से रिक्त करा लिया है – वह अपने मकान में अकेली रह रही है – अपीलार्थी सद्भावी आवश्यकता साबित करने में असफल रही – अपील खारिज। (भगवती तिवारी (श्रीमति) वि. माखनलाल यादव) ...2352

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) – वास्तविक आवश्यकता – वादपत्र में वैकल्पिक स्थान का अभिवचन – आवश्यक नही क्योंकि भूस्वामी वादपत्र संस्थित करने के समय कथित वैकल्पिक स्थान का स्वामी नही था – अधीनस्थ न्यायालय का निर्णय अपास्त और बेदखली का वाद डिक्री किया गया – अपील स्वीकार। (हरविलास द्वारा विधिक प्रतिनिधि श्रीमति प्रेमलता वि. मे. शर्मा मोटर ट्रांसपोर्ट कं.) ...3189

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) – दो पुत्रों की वास्तविक आवश्यकता के आधार पर बेदखली का वाद – केवल एक पुत्र का परीक्षण – अभिनिर्धारित – यह विधि नही है कि प्रत्येक व्यक्ति, जिसकी आवश्यकता के लिए वाद पेश किया गया है, का परीक्षण कराया जाए – अधीनस्थ न्यायालय का निर्णय अपास्त – वाद डिक्री – अपील मंजूर। (हरविलास द्वारा विधिक प्रतिनिधि श्रीमति प्रेमलता वि. मे. शर्मा मोटर ट्रांसपोर्ट कं.) ...3189

स्थान नियंत्रण अधिनियम, म.प्र., (1961 का 41), धारा 12(1)(एफ) – देखें –सिविल प्रक्रिया संहिता 1908, आदेश 6 नियम 17 (सुभाषचंद जावा वि. सुभाष गुप्ता) ...2388

Accommodation Control Act, M.P. (41 of 1961), Section 45 - See - *Civil Procedure Code 1908, Section 9.* [Sulochana v. Rajinder Singh] SC...2487

Administrative Law - *Exercise of discretion by Administrative Authority - When discretion is to be exercised by an authority then it would be free to exercise the discretion as it likes but that does not mean that such authority can exercise the discretion in illegal, unjudicious or arbitrary manner - Arbitrariness runs contrary to the justice, principles of equity and equality - If on the given set of facts, the discretion is exercised in favour of one party then on the same facts, an authority cannot refuse to exercise the discretion in favour of the other party.* [Managing Director M.P. State Mining Corporation Ltd. v. M/s. Narmada Enterprises] ...2956

Administrative Tribunal Act, (13 of 1985), Section 3(q) & 14 - See - *Constitution, Articles 14, 16, 21, 226, 227, 257, 323-A, 323-B* [Vinay Shukla v. State of M.P.] ...2898

Administrative Tribunals Act, (13 of 1985), Section 21 - See - *Constitution, Article 14, 16 & 226* [Nandkishore Narolia v. State of M.P.] ...2591

Ancient Monuments and Archaeological Sites and Remains Act, M.P. (12 of 1964), Sections 2(a), 2(c), 3, - See - *Constitution, Article 226* [Mohammad Rafik Bhutto v. State of M.P.] ...2274

Ancient Monuments and Archaeological Sites and Remains Rules, M.P., 1976, Rule 10 - See - *Constitution, Article 226* [Mohammad Rafik Bhutto v. State of M.P.] ...2274

Arbitration and Conciliation Act, (26 of 1996), Section 8 - See - *Civil Procedure Code 1908, Section 115* [Charanjit Kaur (Smt.) v. S.R. Cable] ...2445

Arbitration and Conciliation Act (26 of 1996), Sections 28, 34, 35 & 37 - Award - Challenge of award - *The appellant No.1 entering into an agreement with respondent No.1 for lifting of sand from various places/mines for the period 24.05.2003 to 23.05.2006 - Clause 16 of the agreement provided that in special circumstances, M.D. is entitled to extend the period of lease and it would be imperative upon him to increase the proportionate quantity and amount of instalment - Period of lease was not extended by M.D. without assigning any reason - A dispute was raised before arbitrator - Arbitrator in award extended the further period of 15 to 17 months - Civil court affirmed the award - In appeal award challenged on the ground that the arbitrator exceeded in his jurisdiction by extending the period of contract - Held - Clause 19 of the agreement provided that in case of any dispute between the parties, the matter could be decided either by the M.D. or by a person nominated by him under the Act - At this stage, the appellants would not be allowed to say that the question referred to the arbitrator could not be decided by him and he committed an error in excess of the jurisdiction conferred upon him - Appeal dismissed.* [Managing Director M.P. State Mining Corporation Ltd. v. M/s. Narmada Enterprises] ...2956

Dec. Indx.08(first)

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 45 – देखें – सिविल प्रक्रिया संहिता 1908, धारा 9 (सुलोचना वि. राजिंदर सिंह) --- SC 2487

प्रशासनिक विधि – प्रशासनिक प्राधिकारी द्वारा विवेकाधिकार का प्रयोग – जब किसी प्राधिकारी द्वारा विवेकाधिकार का प्रयोग किया जाना है तब वह जैसे वह चाहे विवेकाधिकार का प्रयोग करने के लिए स्वतंत्र है किन्तु उसका तात्पर्य यह नहीं है कि ऐसा प्राधिकारी विवेकाधिकार का प्रयोग अवैधानिक, अन्यायिक या मनमाने तरीके से कर सकता है – मनमानापन न्याय, साम्य के सिद्धांतों और समानता के विपरीत है – यदि दिये गये तथ्यों पर विवेकाधिकार का प्रयोग एक पक्षकार के पक्ष में किया जाता है तब समान तथ्यों पर कोई प्राधिकारी विवेकाधिकार का प्रयोग अन्य पक्षकार के पक्ष में करने से इंकार नहीं कर सकता। (मेनेजिंग डायरेक्टर एम.पी. स्टेट माइनिंग कारपोरेशन लि. वि. नर्मदा इंटरप्राइजेस) ...2956

प्रशासनिक अधिकरण अधिनियम, (1985 का 13), धारा 3(क्यू) व 14, – देखें – संविधान, अनुच्छेद 14,16,21,226,227,257,323–ए,323–बी (विनय शुक्ला वि. म.प्र. राज्य) ...2898

प्रशासनिक अधिकरण अधिनियम, (1985 का 13), धारा 21 – देखें –संविधान, अनुच्छेद 14, 16 व 226, (नंदकिशोर नारोलिया वि. म.प्र. राज्य) ...2591

प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम, म.प्र. (1964 का 12), धारा 2(ए), 2(सी), 3 – देखें – संविधान, अनुच्छेद 226 (मोहम्मद रफीक भुट्टो वि. म.प्र. राज्य) ...2274

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Arms Act (54 of 1959), Sections 25 & 27 - See - *Penal Code, 1860, Section 302* [Ganesh @ Ganesha @ Ganesh Prasad v. State of M.P.]- ...3026

Central Excise and Salt Act (1 of 1944), Section 5A(1) - *Small Scale Exemption* *- General Exemption No.1 (Notification No.1/93-C.E., dated 28.02.1993 as amended) Clause 4 - Exemption to manufacturer for first clearances of duty and concessional duty on subsequent clearances - Appellant's small scale industry unit was assigned trade name on the basis of agreement dated 11.01.1994 - Commissioner, Central Excise, after decision of tribunal, acted upon the provision of agreement and granted exemption for period 19.04.1996 to 29.02.2000 - Appellants have also claimed exemption for period 19.04.1995 to 18.04.1996 - Plea of department that assignment was not registered - Held - Assignment need not to be registered - Department once acted upon the agreement of assignment of trade name for period subsequent to 18.04.1996, can not take contrary stand - Tribunal erred in holding that appellants were not entitled to be considered for exemption for period 19.04.1995 to 18.04.1996 - Direction to the tribunal that consider the case of appellant in the light of provisions made in exemption notification and discussion contained in the order.* [Jepika Paints v. Union of India]...2625

Central Excise and Salt Act (1 of 1944), Section 5A(1) - *Small Scale Exemption* *- General Exemption No.1 (Notification No.1/93-C.E., dated 28.02.1993 as amended) Clause 4 - In the notification itself, Explanation-IX mentions that brand name or trade name shall mean a brand name or trade name whether registered or not - Thus, reference to brand name or trade name in clause 4 of the notification is not to the registered brand name or trade name.* [Jepika Paints v. Union of India] ...2625

Change in Government - *Effect* *- Merely because there had been a change in the political scenario does not mean that an unauthorized act can be legalized and new body coming shall have no power to check the action to correct the unauthorized act of the earlier body.* [Sushil Kumar Kanungo v. M.P. Rajya Sahkari Bank Maryadit] ...2238

Chikitsa Shiksha Niyantran Adhiniyam, M.P. (19 of 1973), Section 10, Medical and Dental Post Graduate Course Entrance Examination Rules, M.P. 2005, Rule 21(4), Post Graduate Medical Education Regulation, 2000, Regulation 10(3) *- Transfer from one college to another college or transfer/migration from one course to another - Permissibility - Held - Once Medical Council of India (MCI) has framed the regulations putting an absolute ban on migration/transfer of the student/students undergoing any post graduate course/degree/diploma then Regulation 10(3) would cause an eclipse on the right of the student/students seeking transfer/ migration under Rule 21(4) - Rule 21(4) can be used and utilized in favour of a student only with prior recommendation of State Government and*

आयुध अधिनियम, (1959 का 54), धाराएँ 25 व 27 – देखें – दण्ड संहिता, 1860, धारा 302 (गनेश उर्फ गनेशा उर्फ गनेश प्रसाद वि. म.प्र. राज्य) ...3026

केंद्रीय उत्पाद–शुल्क और नमक अधिनियम (1944 का 1), धारा 5ए(1) – लघु छूट – सामान्य छूट क्र. 1 (अधिसूचना क्र. 1/93–सी.ई., तारीख 28.02.1993 यथा संशोधित), खण्ड 4 – प्रथम निकासी के लिए विनिर्माता को शुल्क की छूट और पश्चात्वर्ती निकासी पर रियायती शुल्क – अपीलार्थी की लघु उद्योग इकाई को तारीख 11.01.1994 के अनुबंध के आधार पर व्यापार नाम समनुदेशित किया गया – आयुक्त, केंद्रीय उत्पाद–शुल्क ने अधिकरण के विनिश्चय के पश्चात् अनुबंध के उपबंधों पर कार्यवाही की और तारीख 19.04.1996 से 29.02.2000 तक की कालावधि के लिए छूट प्रदान की – अपीलार्थियों ने तारीख 19.04.1995 से 18.04.1996 तक की कालावधि के लिए भी छूट का दावा किया – विभाग का अभिवचन कि समनुदेशन पंजीकृत नही किया गया – अभिनिर्धारित – समनुदेशन पंजीकृत होना आवश्यक नही – विभाग ने जब एक बार 18.04.1996 के बाद की अवधि के लिए अनुबन्ध पर कार्यवाही की तो तत्प्रतिकूल आधार नही ले सकता – अधिकरण ने यह अभिनिर्धारित करने में त्रुटि कारित की कि अपीलार्थी 19.04.1995 से 18.04.1996 तक की कालावधि के लिए छूट के लिए विचारित किये जाने के हकदार नही थे – अधिकरण को निदेश दिया कि छूट अधिसूचना में दियें गये उपबंध और आदेश में किये गये विवेचन के आलोक में अपीलार्थी के मामले पर विचार करें। (जेपीका पेंटस् वि. यूनियन ऑफ इंडिया) ...2625

केंद्रीय उत्पाद–शुल्क और नमक अधिनियम (1944 का 1), धारा 5ए(1) – लघु छूट – सामान्य छूट क्र. 1 (अधिसूचना क्र. 1/93–सी.ई., तारीख 28.02.1993 यथा संशोधित), खण्ड 4 – अधिसूचना के स्पष्टीकरण 9 में उल्लिखित ब्रांड नेम या ट्रेड नेम का अर्थ है ब्रांड नेम या ट्रेड नेम चाहे वह रजिस्टर्ड हो या नही – इस प्रकार अधिसूचना के खण्ड 4 में संदर्भित ब्रांड नेम या ट्रेड नेम रजिस्टर्ड ब्रांड नेम या ट्रेड नेम नही है। (जेपीका पेंटस् वि. यूनियन ऑफ इंडिया) ...2625

सरकार में परिवर्तन – प्रभाव – राजनैतिक परिक्षेप में परिवर्तन मात्र का यह अर्थ नही है कि एक अप्राधिकृत कृत्य विधिपूर्ण किया जा सके एवं नयी सरकार को पुरानी सरकार के अप्राधिकृत कार्य को विधिपूर्ण करने के कार्य को जाँच करने का अधिकार नही होगा। (सुशील कुमार कानूनगो वि. एम. पी. राज्य सहकारी बैंक मर्यादित) ...2238

चिकित्सा शिक्षा नियंत्रण अधिनियम, म.प्र. (1973 का 19), धारा 10, चिकित्सा और दंत स्नातकोत्तर पाठ्यक्रम प्रवेश परीक्षा नियम, म.प्र. 2005, नियम 21(4), स्नातकोत्तर चिकित्सा शिक्षा विनियम, 2000, विनियम 10(3) – एक महाविद्यालय से दूसरे महाविद्यालय में स्थानांतरण या एक पाठ्यक्रम से दूसरे में स्थानांतरण/प्रवास – अनुज्ञेयता – अभिनिर्धारित – एक बार जब भारतीय चिकित्सा परिषद् ने स्नातकोत्तर पाठ्यक्रम/डिग्री/डिप्लोमा में अध्ययनरत विद्यार्थी/विद्यार्थियों के प्रवास/स्थानांतरण पर आत्यंतिक रोक लगाते हुए विनियम विरचित किये तब विनियम 10(3) में ऐसे विद्यार्थी जो नियम 21(4) के अन्तर्गत स्थानांतरण/प्रवास चाहते हों उनके अधिकार पर रोक लग गयी – नियम 21(4) केवल राज्य सरकार की पूर्व अनुशंसा और भारतीय चिकित्सा परिषद् के अनुमोदन पर ही विद्यार्थी के पक्ष में प्रयुक्त किया जा सकता है – भारतीय चिकित्सा परिषद् ने नियम निर्मित करके सामान्य अनुमोदन से वैधानिक रूप से इंकार

approval of MCI - MCI by making rules has statutorily refused the approval in general - In absence of any order of approval, the transfer/migration cannot be permitted by university or any authority - With this clarification appeal disposed of. [Medical Council of India v. Dr. Teena Khatri] ...2799

Civil Procedure Code (5 of 1908) [As stood prior to amendment came into force w.e.f. 01.02.1977), Sections 2(2) & 47 - *Prior to amendment, determination of any question u/s 47 of CPC was having force of a decree as prior to amendment defined u/s 2(2) CPC.* [Sheikh Hameed v. Sheikh Majhar]...2947

Civil Procedure Code (5 of 1908) [As stood prior to amendment came into force w.e.f. 01.02.1977), Section 11 - *Prior to amendment, an adjudication or determination of any question u/s 47 of CPC determining rights of the parties was a decree between parties - Such order has attained finality and is having effect of res judicata between the parties - Held - Suit filed by plaintiffs was barred u/s 11 of CPC - They were not entitled to file a fresh suit for adjudication of questions which were already decided u/s 47 of CPC.* [Sheikh Hameed v. Sheikh Majhar] ...2947

Civil Procedure Code (5 of 1908), Section 2(11) - Legal Representative - ***Probate*** - *Decree of eviction passed in favour of Smt. Gouri Bahu who died during pendency of appeal - Applicant claiming herself to be legal representative on the basis of will - Executing court accepting the objection hold that applicant would be free to execute decree after obtaining the probate certificate - Held - Property is situated within State of M.P. - Obtaining of probate not necessary - Applicant has a right to execute decree as property has been devolved on the applicant - Revision allowed.* [Gouri Bahu (Smt.) Through L.R. Smt. Shashi Devi v. Gopaldas] ...3037

Civil Procedure Code (5 of 1908), Section 9, Accommodation Control Act, M.P. 1961, Section 45 - ***Jurisdiction of Civil Court*** - *Provisions regarding exclusion of jurisdiction of civil court are to be strictly construed - The jurisdiction of civil court can be excluded only if the matter comes within the purview of Section 45 of the Act of Chapter-III.* [Sulochana v. Rajinder Singh] SC...2487

Civil Procedure Code (5 of 1908), Section 10 - Stay of suit - ***Maintainability of application*** - *Landlord earlier filed a suit for eviction and arrears of rent in the year 2004 - Tenant filed a counterclaim for the interest on security amount - Subsequently, the suit was withdrawn and only counterclaim remained - Second suit filed by the landlord for eviction and arrears of rent in the year 2006 - In second suit an objection has been raised by the tenant that the second suit is liable to be stayed in view of Section 10 CPC - The court below rejected the application - Held - The two suits are on different footings and in the earlier suit the matter in relation to the subsequent suit is not the matter "substantially in issue" - Court below rightly rejected the application - Petition dismissed.* [Shashi Pandey (Smt.) v. B.K. Choubey] ...3123

कर दिया – अनुमोदन के किसी आदेश के अभाव में विश्वविद्यालय या किसी प्राधिकारी द्वारा स्थानांतरण/प्रवास की अनुमति नही दी जा सकती – इस स्पष्टीकरण के साथ अपील निपटाई गई। (मेडिकल काउंसिल ऑफ इंडिया वि. डॉ. टीना खत्री) ...2799

सिविल प्रक्रिया संहिता (1908 का 5) [01.02.1977 से प्रभाव में आये संशोधन के पूर्व की स्थिति], धाराएँ 2(2) व 47 – संशोधन के पूर्व सि.प्र.सं. की धारा 47 के अन्तर्गत किसी प्रश्न का अवधारण डिक्री का प्रभाव रखता था जैसा कि संशोधन के पूर्व सि.प्र.सं. की धारा 2(2) में परिभाषित था। (शेख हमीद वि. शेख मजहर) ...2947

सिविल प्रक्रिया संहिता (1908 का 5) [01.02.1977 से प्रभाव में आये संशोधन के पूर्व की स्थिति], धारा 11 – संशोधन के पूर्व पक्षकारों के अधिकारों को अवधारित करते हुए सि. प्र.सं. की धारा 47 के अन्तर्गत किसी प्रश्न का न्यायनिर्णयन या अवधारण पक्षकारों के मध्य डिक्री था – ऐसा आदेश अंतिम हो गया और पक्षकारों के मध्य पूर्व न्याय का प्रभाव रखता है – अभिनिर्धारित – वादियों द्वारा पेश वाद सि.प्र.सं. की धारा 11 के अन्तर्गत वर्जित था – वे सि.प्र.सं. की धारा 47 के अन्तर्गत पहले ही विनिश्चित कर दिये गये प्रश्न के न्यायनिर्णयन के लिए नवीन वाद पेश करने के हकदार नही थे। (शेख हमीद वि. शेख मजहर) ...2947

सिविल प्रक्रिया संहिता (1908 का 5), धारा 2(11) – विधिक प्रतिनिधि – प्रोबेट – बेदखली की डिक्री श्रीमती गौरी बहू के पक्ष में पारित की गई जिसकी अपील के लम्बित रहने के दौरान मृत्यु हो गई – आवेदक ने वसीयत के आधार पर स्वयं को विधिक प्रतिनिधि होने का दावा किया – विचारण न्यायालय ने आपत्ति स्वीकार करते हुए अभिनिर्धारित किया कि आवेदक प्रोबेट प्रमाण पत्र प्राप्त करने के पश्चात् डिक्री का निष्पादन कराने के लिए स्वतंत्र होगी – अभिनिर्धारित – सम्पत्ति म.प्र. राज्य के भीतर स्थित है – प्रोबेट प्राप्त करना आवश्यक नही – आवेदक को डिक्री निष्पादित कराने का अधिकार है क्योंकि सम्पत्ति आवेदक पर न्यागत हो गई है – पुनरीक्षण मंजूर। (गौरी बहू (श्रीमति) द्वारा विधिक उत्तराधिकारी श्रीमति शशि देवी वि. गोपाल दास) ...3037

सिविल प्रक्रिया संहिता (1908 का 5), धारा 9, स्थान नियंत्रण अधिनियम, म.प्र. 1961, धारा 45 – सिविल न्यायालय की अधिकारिता – सिविल न्यायालय की अधिकारिता के अपवर्जन से संबंधित उपबंधों का अर्थ कड़ाई से लगाया जाना चाहिए – सिविल न्यायालय की अधिकारिता केवल तब अपवर्जित की जा सकती है जब मामला अधिनियम के अध्याय 3 की धारा 45 के सीमा क्षेत्र में आता है। (सुलोचना वि. राजिंदर सिंह) --- SC 2487

सिविल प्रक्रिया संहिता (1908 का 5), धारा 10 – वाद का रोक दिया जाना – आवेदन की पोषणीयता – भूस्वामी ने पूर्व में बेदखली और बकाया किराये के लिए वाद वर्ष 2004 में पेश किया – किरायेदार ने प्रतिभूति राशि पर ब्याज के लिए प्रतिदावा पेश किया – पश्चात्वर्ती प्रक्रम में, वाद वापस ले लिया गया और केवल प्रतिदावा चलता रहा – भूस्वामी द्वारा द्वितीय वाद बेदखली और बकाया भाड़े के लिए वर्ष 2006 में पेश किया गया – द्वितीय वाद में किरायेदार द्वारा आपत्ति की गई कि सि.प्र.सं. की धारा 10 के अनुसार द्वितीय वाद की कार्यवाही रोके जाने योग्य है – अधीनस्थ न्यायालय ने आवेदन खारिज किया – अभिनिर्धारित – दो वाद पृथक आधारों पर हैं और पूर्ववर्ती वाद की विषयवस्तु पश्चात्वर्ती वाद में "सारतः विवाद्यक" नही है – अधीनस्थ न्यायालय ने आवेदन उचित रूप से खारिज किया – याचिका खारिज। (शशि पांडे (श्रीमति) वि. बी.के. चौबे) ...3123

Civil Procedure Code (5 of 1908), Section 11 - *Res judicata - In order to prove question of res judicata, not only earlier decision but pleadings of earlier case and issues framed by such court requires to be proved - Any order passed by any authority on merits in any proceeding which is not entertainable or maintainable could not be treated as enforceable order - Any finding on merits in non-entertainable proceedings did not have effect of res judicata.* [Bhagwati Tiwari (Smt.) v. Makhanlal Yadav] ...2352

Civil Procedure Code (5 of 1908), Section 20, Trade Marks Act, 1999, Section 134 - *Territorial jurisdiction - Articles in large number found within jurisdiction of trial court - Section 138 does not override provision of Code - Cause of action having arisen within jurisdiction - Held - The trial court did not suffer from lack of jurisdiction - Suit was maintainable.* [Rasiklal Manikchand Dhariwal; And Dhariwal Industries Ltd. v. M/s. M.S.S. Food Products] ...3225

Civil Procedure Code (5 of 1908), Section 34, Constitution, Article 227 - *Interest - Trial court awarded interest at rate of 18% p.a. from the date of institution of suit till realisation without recording a finding that the loan transaction was a commercial transaction - Held - Trial court has no jurisdiction to award interest at the rate of 18% p.a. after judgment and decree upto realisation of amount - Upto that extent decree passed by trial court is a nullity -Objection can be raised at the stage of execution and also proceeding under Article 227 of the Constitution - If decree is nullity upto that extent cannot be executed - Petition allowed.* [Chitrarekha (Smt.) v. Virendra Kumar Sharma] ...2611

Civil Procedure Code, (5 of 1908), Section 96 - See - *Limitation Act 1963, Section 5* [International Association of Lions Clubs v. Dr. Jagjit Singh Khanna] ...2342

Civil Procedure Code (5 of 1908), Section 100 - *Finding of both the courts that plaintiffs were minor at the time of execution of sale deed is the finding of fact and such a finding cannot be disturbed in second appeal without formulating the substantial question of law.* [Gendalal (Since Dead) through L.Rs. Sajjanbai Etc. v. Pannalal (Since Dead) through L.Rs. Lilabai Etc.] ...3207

Civil Procedure Code (5 of 1908), Section 100 - *Scope for interference - Findings are based upon proper appreciation of evidence therefore they are binding on High Court - Court below did not consider any inadmissible evidence and as such, there is no scope for interference with such findings - Appeal dismissed summarily.* [Amar Singh v. Shiv Narayan] ...3246

Civil Procedure Code (5 of 1908), Section 100 - *Scope of interference in second appeal - Both the courts below have concurrently held that agreement declaring that land has been mortgaged was executed by the defendants - It is finding of fact - There is no material to hold that it is a*

सिविल प्रक्रिया संहिता (1908 का 5), धारा 11 – पूर्व–न्याय – पूर्व–न्याय के प्रश्न को साबित करने के लिए, न केवल पूर्व विनिश्चय बल्कि पूर्व मामले के अभिवचनों एवं ऐसे न्यायालय द्वारा विरचित विवाद्यकों को भी साबित किया जाना अपेक्षित है – किसी प्राधिकारी द्वारा, किसी कार्यवाही में, जो ग्रहण किये जाने योग्य एवं पोषणीय नही है, गुणदोषों पर पारित कोई आदेश प्रवर्तनीय आदेश के रूप में नहीं माना जा सकता – अग्रहण योग्य कार्यवाहियों में गुणदोषों पर कोई निष्कर्ष पूर्व–न्याय का प्रभाव नहीं रखता। (भगवती तिवारी (श्रीमति) वि. माखनलाल यादव)...2352

सिविल प्रक्रिया संहिता (1908 का 5), धारा 20, व्यापार चिह्न अधिनियम, 1999, धारा 134 – क्षेत्रीय अधिकारिता – बड़ी संख्या में वस्तुऐं विचारण न्यायालय की अधिकारिता में पायी गईं – धारा 138 संहिता के उपबंध को अधिशासित नही करती – वाद कारण अधिकारिता के भीतर उत्पन्न हुआ – अभिनिर्धारित – विचारण न्यायालय को अधिकारिता की कमी नही थी – वाद पोषणीय था। (रसिकलाल मानिकचंद धारीवाल एवं धारीवाल इंडस्ट्रीज लि. वि. मे. एम.एस.एस. फुड प्रोडक्टस्) ...3225

सिविल प्रक्रिया संहिता (1908 का 5), धारा 34, संविधान, अनुच्छेद 227 – ब्याज – विचारण न्यायालय ने यह निष्कर्ष अभिलिखित किये बिना कि ऋण संव्यवहार वाणिज्यिक संव्यवहार था, वाद संस्थित किये जाने की तारीख से वसूली तक 18 प्रतिशत प्रतिवर्ष की दर से ब्याज अधिनिर्णीत किया – अभिनिर्धारित – विचारण न्यायालय को निर्णय व डिक्री के पश्चात् राशि की वसूली तक 18 प्रतिशत प्रतिवर्ष की दर से ब्याज अधिनिर्णीत करने की अधिकारिता नही है – उस सीमा तक विचारण न्यायालय द्वारा पारित डिक्री अकृत है – आपत्ति निष्पादन के प्रक्रम पर और संविधान के अनुच्छेद 227 के अन्तर्गत कार्यवाही में भी उठायी जा सकती है – यदि डिक्री अकृत है तो उस सीमा तक निष्पादित नही कराई जा सकती – याचिका मंजूर। (चित्ररेखा (श्रीमति) वि. वीरेन्द्र कुमार शर्मा) ...2611

सिविल प्रक्रिया संहिता, (1908 का 5), धारा 96 – देखें – परिसीमा अधिनियम 1963, धारा 5, (इंटरनेशनल एसोशिएशन ऑफ लायंस क्लब वि. डॉ. जगजीत सिंह खन्ना) ...2342

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – दोनों अधीनस्थ न्यायालयों का निष्कर्ष कि विक्रयपत्र के निष्पादन के समय वादीगण अवयस्क थे – तथ्य का निष्कर्ष है और ऐसे निष्कर्ष में द्वितीय अपील में विधि का सारवान प्रश्न विनिर्मित किये बिना हस्तक्षेप नही किया जा सकता। (गेंदालाल (मृतक) द्वारा विधिक प्रतिनिधि सज्जनबाई आदि वि. पन्नालाल (मृतक) द्वारा विधिक प्रतिनिधि लीलाबाई आदि) ...3207

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – हस्तक्षेप का क्षेत्र – निष्कर्ष साक्ष्य के उचित अधिमूल्यंन पर आधारित हैं इसलिए वे उच्च न्यायालय पर बंधनकारी हैं – अधीनस्थ न्यायालय ने किसी अग्राह्य साक्ष्य पर विचार नही किया और इसलिए ऐसे निष्कर्षों में हस्तक्षेप की कोई गुंजाइश नही है – अपील संक्षेपतः खारिज। (अमर सिंह वि. शिवनारायण) ...3246

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – द्वितीय अपील में हस्तक्षेप का क्षेत्र – दोनों अधीनस्थ न्यायालयों ने समवर्ती रूप से अभिनिर्धारित किया कि प्रतिवादियों ने यह घोषित करते हुए कि भूमि बंधक की गई है अनुबंध निष्पादित किया – यह तथ्य का निष्कर्ष है – यह अभिनिर्धारित करने के लिए कोई सामग्री नही है कि निष्कर्ष अनुचित है – द्वितीय अपील में

perverse finding - Cannot be interefered in second appeal. [Gendalal (Since Dead) through L.Rs. Sajjanbai Etc. v. Pannalal (Since Dead) through L.Rs. Lilabai Etc.] ...3207

Civil Procedure Code (5 of 1908), Section 100 - *Suit for mandatory and permanent injunction that there exists a 'Gali' between two houses and defendant be restrained from closing it as the easementary rights of the plaintiff were adversely affected - The trial court dismissed the suit and lower appellate court dismissed the appeal - Second appeal filed - Held - Admittedly, plaintiff has neither proved that he is the owner of the aforesaid 'Gali', nor has proved or established his easementary right over the same - To prove the latter it is necessary to establish that it was exercised on some one else's property and not as an incident of his own ownership of that property - Appeal dismissed.* [Girdharilal v. Balchand] ...2636

Civil Procedure Code (5 of 1908), Section 100, Order 1 Rule 3B (M.P. Amendment Act No. 29 of 1984) - ***Any right over agriculture land*** - *State is necessary party - Can be added at any stage - Any suit between two parties relating to any right over agricultural land even without any relief against the State - The State of M.P. necessary party - But a plaintiff cannot be non-suited on that ground - State can be added as party at any stage on which the objection is taken.* [Sitaram v. Radheshyam] ...2631

Civil Procedure Code (5 of 1908), Section 115, Arbitration and Conciliation Act, 1996, Section 8 - ***Arbitration Clause*** - *Applicant filed suit for declaration & injunction - Counterclaim by defendant - Applicant permitted to withdraw suit - Counterclaim entertained as suit - On first date of that suit objection for referring dispute to arbitration filed - Rejection - Objection qualifies the expression "the first statement on the substance of dispute" of Section 8 of the Act - Held - Rejection of objection not sustainable - Dispute referred to arbitration - Revision allowed.* [Charanjit Kaur (Smt.) v. S.R. Cable] ...2445

Civil Procedure Code (5 of 1908), Section 115, Specific Relief Act, 1963, Section 28 - ***Agreement for sale of immovable property*** - *Award of arbitrator directing execution of sale deed - Rejection of application for rescission of contract - Revision - There was no unreasonable delay on part of non-applicant No.1 to approach court for enforcing award - Delay attributed to applicants themselves - Held - The rise in price relating to immovable property agreed to be conveyed to non-applicant No.1 would not be relevant to deny relief of specific performance - No ground for interference in order of trial court made out - Revision dismissed.* [Mohanlal Garg v. M/s. Chaudhary Builders Pvt. Ltd] ...2720

Civil Procedure Code (5 of 1908), Section 151, Order 21 Rule 64, 66, 67, 83, 90, 92, Order 34 Rule 5 - *Auction of mortgaged property for realisation of the decree amount - Proclamation of sale made on a particular*

हस्तक्षेप नही किया जा सकता। (गेंदालाल (मृतक) द्वारा विधिक प्रतिनिधि सज्जनबाई आदि वि. पन्नालाल (मृतक) द्वारा विधिक प्रतिनिधि लीलाबाई आदि) ...3207

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – आज्ञापक और स्थायी व्यादेश के लिए दावा कि दोनों घरों के बीच में गली स्थित है और प्रतिवादी को इसे बंद करने से निषेधित किया जावे क्योंकि वादी के सुखाधिकार प्रतिकूल रूप से प्रभावित हुए – विचारण न्यायालय ने वाद खारिज किया और निचले अपीलीय न्यायालय ने अपील खारिज की – द्वितीय अपील पेश की – अभिनिर्धारित – स्वीकृत रूप से वादी ने न तो यह साबित किया कि वह पूर्वोक्त गली का स्वामी है और न उस पर अपने सुखाधिकार को साबित या स्थापित किया – पश्चात्वर्ती को साबित करने के लिए यह स्थापित करना आवश्यक है कि वह किसी अन्य की सम्पत्ति पर न कि प्रसंगति के रूप में उसके स्वयं के स्वामित्व की सम्पत्ति पर, उपयोग किया गया – अपील खारिज। (गिरधारीलाल वि. बालचंद) ...2636

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100, आदेश 1 नियम 3बी (1984 का म.प्र. संशोधन अधिनियम क्र. 29) – कृषि भूमि पर किसी अधिकार का दावा – राज्य आवश्यक पक्षकार है – किसी भी प्रक्रम पर जोड़ा जा सकता है – दो पक्षकारों के मध्य राज्य के विरुद्ध किसी अनुतोष के बिना कृषि भूमि पर किसी अधिकार के सम्बन्ध में कोई वाद – राज्य आवश्यक पक्षकार – किन्तु वादी का वाद इस आधार पर समाप्त नही किया जा सकता – राज्य को पक्षकार के रूप में किसी भी प्रक्रम पर जोड़ा जा सकता है जिस समय ऐसी आपत्ति ली गई हो। (सीताराम वि. राधेश्याम) ... 2631

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115, माध्यस्थम् और सुलह अधिनियम, 1996, धारा 8 – माध्यस्थम खण्ड – आवेदक ने घोषणा एवं व्यादेश हेतु वाद पेश किया – प्रतिवादी द्वारा प्रतिदावा – आवेदक को वाद वापस लेने की अनुमति दी गई – प्रतिदावा, वाद के रूप में ग्रहण किया गया – उस वाद की प्रथम तिथि पर विवाद माध्यस्थम् के लिए निर्दिष्ट करने के लिए आपत्ति पेश की गई – नामांजूर – आपत्ति अधिनियम की धारा 8 के पद "विवाद के सार पर प्रथम कथन" को विशेषित करती है – अभिनिर्धारित – आपत्ति का नामंजूर किया जाना स्थिर रखे जाने योग्य नहीं – विवाद माध्यस्थम् के लिए निर्दिष्ट – पुनरीक्षण मंजूर। (चरनजीत कोर वि. एस.आर. केबल) ...2445

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115, विनिर्दिष्ट अनुतोष अधिनियम, 1963, धारा 28 – स्थावर सम्पत्ति के विक्रय के लिए अनुबन्ध – मध्यस्थ के अवार्ड में विक्रयपत्र निष्पादित करने का निदेश – संविदा के विखण्डन के लिए आवेदन खारिज – पुनरीक्षण – अनावेदक क्र. 1 ने अवार्ड को प्रवृत्त कराने के लिए न्यायालय से निवेदन करने में कोई अयुक्तियुक्त विलम्ब नही किया – स्वयं आवेदकों द्वारा विलम्ब किया जाना माना जा सकता है – अभिनिर्धारित – अनावेदक क्र. 1 को हस्तान्तरण के लिए अनुबन्धित स्थावर सम्पत्ति के मूल्य में वृद्धि होना विनिर्दिष्ट पालन के अनुतोष से इंकार करने के लिए सुसंगत नही होगा – विचारण न्यायालय के आदेश में हस्तक्षेप करने का कोई आधार नही – पुनरीक्षण खारिज। (मोहनलाल गर्ग वि. मे. चौधरी बिल्डर्स प्रा. लि.) ...2720

सिविल प्रक्रिया संहिता (1908 का 5), धारा 151, आदेश 21 नियम 64, 66, 67, 83, 90, 92, आदेश 34 नियम 5 – डिक्री धन की वसूली के लिए बंधक सम्पत्ति की नीलामी – विक्रय की उद्घोषणा विशिष्ट तारीख को की गई किन्तु विक्रय किसी अन्य तारीख को किया गया

date but sale taking on some other day for which separate proclamation not made - After auction the sale certificate issued in favour of respondent No.5 - Action challenged in for setting-aside the sale - Held - Order is governed by Order 34 and its rules of CPC and that itself is a code to deal with the decree passed in mortgage suit - In the entire scheme of Order 34 of CPC, there is no provision like Order 21 Rule 64, 66, 67 and 69 of CPC - Therefore, objection filed by appellant before executing court u/O 21 Rule 92 was not entertainable and executing court has not committed any error in dismissing the same - Appeal dismissed. [Mohd. Aleem v. Bank of India] ...2942

Civil Procedure Code (5 of 1908) [As stood prior to amendment came into force w.e.f. 01.02.1977), Order 21 Rules 99, 100, 101 & 103 - *Objectors' objections u/O 21 Rules 99, 100 & 101 CPC were dismissed by the trial court on 16.10.1975 - After dismissal of the objections objectors ought to have filed a suit as required u/O 21 Rule 103 CPC and limitation of one year was provided under Article 98 of Limitation Act, 1963 - Order 21 Rule 103 CPC was amended and a new rule was substituted w.e.f. 01.02.1977 - Now rule specifically provides that order deciding an application under Rule 98 or Rule 100 of Order 21 shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree, meaning thereby that an order u/O 21 Rules 98 & 100 CPC has been given effect to as of decree and no fresh suit is maintainable.* [Sheikh Hameed v. Sheikh Majhar] ...2947

Civil Procedure Code, (5 of 1908), Order 1 Rule 10, Order 30 - See - *Accommodation Control Act, M.P. 1961, Section 12(1)(a), (c) & (f).* [Babulal Birla (Dead) Through LRs. Smt. Krishna Devi v. Ram Prakash Sharma] ...2646

Civil Procedure Code (5 of 1908), Order 6 Rule 2 - ***Pleading*** **-** *Tenant's contention that there was a absence of precise pleading regarding non-payment of arrears of rent despite service of demand notice - Eviction decree on the ground of Section 12(1)(a) cannot be passed - Held - It is clear from plaint averments that tenant failed to pay or tender arrears of rent despite service of demand notice - Thus, parties were alive to the controversy and accordingly conducted their case - Trial court had framed issues also in this regard - Finding of trial court in respect of non-payment of arrears of rent affirmed - Appeal dismissed summarily.* [Sujanmal v. Kailash Chandra Agarwal] ...3243

Civil Procedure Code (5 of 1908), Order 6 Rule 17, Accommodation Control Act, M.P., 1961, Section 12(1)(f) - *Trial court passed the decree against tenant on the ground of Section 12(1)(f) of the Act - Tenant filed application under Order 6 Rule 17 CPC before First Appellate Court that landlord purchased shop in the name of his brother, in which landlord was carrying on business and necessity, if any, had came to an end - First Appellate*

जिसके लिए पृथक उद्घोषणा नही की गई – नीलामी के बाद विक्रय प्रमाण पत्र प्रत्यर्थी क्र. 5 के पक्ष में जारी किया गया – विक्रय को अपास्त कराने के लिए कृत्य को चुनौती दी गई – अभिनिर्धारित – आदेश सि.प्र.सं. के आदेश 34 और उसके नियमों से शासित होता है और वह स्वयं बंधक वादों में पारित डिक्री के लिए एक संहिता है – सि.प्र.सं. के आदेश 34 की पूरी स्कीम में सि.प्र.सं. के आदेश 21 नियम 64, 66, 67 और 69 के समान कोई उपबंध नही है – इसलिए अपीलार्थी द्वारा आदेश 21 नियम 92 के अन्तर्गत निष्पादन न्यायालय के समक्ष पेश आपत्ति ग्रहण किये जाने योग्य नही थी और निष्पादन न्यायालय ने उसे खारिज करने में कोई त्रुटि नही की – अपील खारिज। (मोहम्मद अलीम वि. बैंक ऑफ इंडिया) ...2942

सिविल प्रक्रिया संहिता (1908 का 5) [01.02.1977 से प्रभाव में आये संशोधन के पूर्व की स्थिति], आदेश 21 नियम 99, 100, 101 व 103 – आपत्तिकर्ताओं की सि.प्र.सं. के आदेश 21 नियम 99, 100 व 101 के अन्तर्गत आपत्तियाँ विचारण न्यायालय द्वारा 16.10.1975 को खारिज की गईं – आपत्तियों के खारिज होने के बाद आपत्तिकर्ताओं को सि.प्र.सं. के आदेश 21 नियम 103 की अपेक्षानुसार वाद पेश करना चाहिए था और परिसीमा अधिनियम, 1963 के अनुच्छेद 98 के अन्तर्गत एक वर्ष की परिसीमा उपबंधित की गई थी – सि.प्र.सं. का आदेश 21 नियम 103 संशोधित हो गया और तारीख 01.02.1977 से नया नियम प्रतिस्थापित किया गया – अब नियम विनिर्दिष्ट रूप से उपबंधित करता है कि आदेश 21 नियम 98 या नियम 100 के अन्तर्गत किसी आवेदन को विनिश्चित करने वाला आदेश वही प्रभाव रखेगा और उन्ही शर्तों के अध्यधीन होगा जैसा कि किसी अपील या अन्य कार्यवाही की लिए होतीं, यदि वह डिक्री होता, इसका तात्पर्य यह है कि सि.प्र.सं. के आदेश 21 नियम 98 व 100 के अन्तर्गत आदेश को डिक्री के समान प्रभाव दिया गया है और कोई नवीन वाद पोषणीय नही है। (शेख हमीद वि. शेख मजहर) ...2947

सिविल प्रक्रिया संहिता, (1908 का 5), आदेश 1 नियम 10, आदेश 30 – देखें – स्थान नियंत्रण अधिनियम, म.प्र. 1961, धारा 12(1)(ए), (सी) एवं (एफ). (बाबूलाल बिरला (मृतक) द्वारा विधिक उत्तराधिकारी श्रीमति कृष्णा देवी वि. राम प्रकाश शर्मा) ...2646

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 2 – अभिवचन – किरायेदार का प्रतिवाद कि माँग के सूचनापत्र की तामीली के बावजूद बकाया किराया अदा नही किया इस सम्बन्ध में सुनिश्चित अभिवचन का अभाव था – धारा 12(1)(ए) के आधार पर बेदखली की डिक्री पारित नही की जा सकती – अभिनिर्धारित – वादपत्र के प्रकथनों से स्पष्ट है कि किरायेदार माँग के सूचनापत्र की तामीली के बावजूद बकाया किराया अदा करने या निविदत्त करने में असफल रहा – इस प्रकार, पक्षकार विवाद से अवगत थे और इसी प्रकार उन्होंने उनका मामला संचालित किया – विचारण न्यायालय ने इस सम्बन्ध में विवाद्यक भी विरचित किये – विचारण न्यायालय के बकाया किराया न दिये जाने से सम्बन्धित निष्कर्ष की पुष्टि की गई – अपील संक्षेपतः खारिज। (सुजानमल वि. कैलाशचंद्र अग्रवाल) ...3243

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17, स्थान नियंत्रण विधान, म.प्र., 1961, धारा 12(1)(एफ) – विचारण न्यायालय ने अधिनियम की धारा 12(1)(एफ) के आधार पर किरायेदार के विरुद्ध डिक्री पारित की – किरायेदार ने सि.प्र.सं. के आदेश 6 नियम 17 के अन्तर्गत प्रथम अपील न्यायालय के समक्ष आवेदन पेश किया कि भू–स्वामी ने दुकान उसके भाई के नाम से खरीद ली है जिसमें भू–स्वामी व्यापार कर रहा है और यदि कोई आवश्यकता थी तो वह समाप्त हो गई – प्रथम अपील न्यायालय ने आवेदन पर विचार करने के पश्चात् गुणदोषों पर आवेदन खारिज

Court considering the merits of the application rejected it - Held - Merely an application was filed alleging certain facts against the landlord by itself was not sufficient to set-aside the judgment & decree and remand the case - First Appellate Court after considering the registered sale deed and licence issued by Municipal Corporation found that application was frivolous and grounds stated in the application needs not to be enquired into - No error found in order. [Subhash Chand Jawa v. Subhash Gupta] ...2388

Civil Procedure Code (5 of 1908), Order 6 Rule 17 - *Principles* - *Amendment of plaint & amendment of written statement are not necessarily governed by exactly the same principles though some general principles are common to both but the rule that the plaintiff cannot be allowed to amend the pleadings so as to alter materially or substitute his cause of action of the nature of his claim as necessarily no counter part in law related to written statement - The courts are inclined to be more liberal in allowing the amendment of the written statement than of plaint and question of prejudice is less likely to operate on the same rigour in the former than the latter.* [Sushil Kumar Kanungo v. M.P. Rajya Sahkari Bank Maryadit] ...2238

Civil Procedure Code, (5 of 1908), Order 6 Rule 17 & Order 41 Rule 33 - See - *Cooperative Societies Act, M.P, 1960, Section 55 & 64* [Sushil Kumar Kanungo v. M.P. Rajya Sahkari Bank Maryadit] ...2238

Civil Procedure Code (5 of 1908), Order 7 Rule 11, Mohammedan Law - *Inheritance* - *Suit for declaration, partition and separate possession - Dismissed on the ground that in Mohammedan Law sons of predeceased son are not entitled to claim property of their grandfather - Appellate court reversed the finding and remanded the case - Held - Suit involved mixed questions of law and fact - Property was agriculture holdings and what would be the position of devolution of agriculture holdings of a person governed by Mohammedan Law has to be decided on merits - Appellate court committed no error in remanding case - Revision dismissed.* [Sheikh Ikar v. Sheikh Shamim Ahmad] ...3041

Civil Procedure Code (5 of 1908), Order 8 Rule 3 & 5, Accommodation Control Act, 1961, Section 12(1)(a) - *Suit for eviction* - *Allegation of arrears of rent - No specific denial of arrears of rent or service of notice - Even after order of trial Court to deposit arrears of rent, appellant again committed default - Application for condonation of default rejected - In absence of specific denial, the fact will be deemed to be admitted on the ground of non-traverse - Held - Appellant failed to establish denial of the landlord-tenant relationship - Decree of eviction rightly passed by two courts below - Appeal dismissed.* [Santosh (Smt.) v. Mohd. Sharif] ...2326

Civil Procedure Code (5 of 1908), Order 18 Rule 4 - *Affidavits* - *Despite opportunity to cross-examine - Defendants made no effort to cross-*

कर दिया – अभिनिर्धारित – केवल आवेदन पेश करना और उसमें भू स्वामी के विरुद्ध कुछ तथ्यों का अभिकथन करना स्वतः निर्णय और डिक्री अपास्त करने और मामला प्रतिप्रेषित करने के लिए पर्याप्त नही था – प्रथम अपील न्यायालय ने रजिस्टर्ड विक्रयपत्र और नगर निगम द्वारा जारी किये गये लायसेंस पर विचार करने पर पाया कि आवेदन तुच्छ था और आवेदन में कथित आधारों की जाँच किया जाना आवश्यक नही है – आदेश में कोई त्रुटि नही पायी गई। (सुभाष चंद जावा वि. सुभाष गुप्ता) ...2388

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – सिद्धांत – वाद में संशोधन व वादोत्तर में संशोधन अनिवार्य रूप से समान सिद्धांतों से नियंत्रित नहीं होते तथापि कुछ सामान्य सिद्धांत दोनों में समान हैं किन्तु यह सिनयम कि वादी को अभिवचन में ऐसा संशोधन की अनुमति नहीं दी जा सकती जो वाद हेतुक या वाद प्रकृति को परिवर्तित या प्रतिस्थापित करे, वादोत्तर के संबंध में कानून में कोई प्रतिरूप नही है – न्यायालय वादपत्र की अपेक्षा वादोत्तर में संशोधन मंजूर करने में ज्यादा उदार होती है एवं प्रतिकूल प्रभाव का प्रश्न भी वादोत्तर में वादपत्र से कम शक्ति प्रभावशील होता है। (सुशील कुमार कानूनगो वि. एम.पी. राज्य सहकारी बैंक मर्यादित) ...2238

सिविल प्रक्रिया संहिता, (1908 का 5), आदेश 6 नियम 17 व आदेश 41 नियम 33 – देखें –सहकारी सोसायटी अधिनियम, म.प्र., 1960, धारा 55 व 64, (सुशील कुमार कानूनगो वि. एम.पी. राज्य सहकारी बैंक मर्यादित) ...2238

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11, मुस्लिम विधि – उत्तराधिकार – घोषणा, विभाजन और पृथक कब्जे के लिए वाद – इस आधार पर खारिज किया गया कि मुस्लिम विधि में पूर्वमृत पुत्र के पुत्र अपने दादा की सम्पत्ति में दावा करने के हकदार नही हैं – अपीलीय न्यायालय ने निष्कर्ष को उलट दिया और मामला प्रतिप्रेषित किया – अभिनिर्धारित – मामले में विधि और तथ्य के मिश्रित प्रश्न अन्तर्ग्रस्त हैं – सम्पत्ति कृषि खाता था और मुस्लिम विधि से शासित होने वाले किसी व्यक्ति के कृषि खाते के न्यागमन की स्थिति क्या होगी यह गुणदोषों पर विनिश्चित किया जाना है – अपील न्यायालय ने मामला प्रतिप्रेषित करने में कोई त्रुटि नही की – पुनरीक्षण खारिज। (शेख इकर वि. शेख शमीम एहमद) ...3041

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 8 नियम 3 व 5, स्थान नियंत्रण अधिनियम, 1961, धारा 12(1)(ए) – बेदखली के लिए वाद – भाड़ा बकाया होने का अभिकथन – भाड़ा बकाया होने का या सूचनापत्र की तामील का विनिर्दिष्ट प्रत्याख्यान नहीं – विचारण न्यायालय के बकाया भाड़ा जमा करने के आदेश के बाद भी अपीलार्थी ने पुनः व्यतिक्रम किया – व्यतिक्रम को क्षमा करने का आवेदन खारिज – विनिर्दिष्ट प्रत्याख्यान के अभाव में अखण्डन के आधार पर तथ्य स्वीकृत हुआ समझा जाएगा – अभिनिर्धारित – अपीलार्थी भूस्वामी–अभिधारी सम्बन्ध के प्रत्याख्यान को स्थापित करने में असफल रहा – बेदखली की डिक्री दोनों अधीनस्थ न्यायालयों द्वारा सही रूप से पारित – अपील खारिज। (संतोष (श्रीमति) वि. मोहम्मद शरीफ) ...2326

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 18 नियम 4 – शपथपत्र – प्रतिपरीक्षण के अवसर के बावजूद – प्रतिवादियों ने वादी के साक्षियों का प्रतिपरीक्षण करने का कोई

examine plaintiff's witnesses - It was not necessary in ex parte proceeding to bring the witness to the witness box merely for appearing and stepping down - Ex parte decree affirmed. [Rasiklal Manikchand Dhariwal; And Dhariwal Industries Ltd. v. M/s. M.S.S. Food Products] ...3225

Civil Procedure Code (5 of 1908), Order 38 Rule 5 - *Attachment before judgment* - *Where defendant may be called upon to furnish security for production of property - Held - A defendant is not debarred from dealing with his property merely because a suit is filed or about to be filed against him before judgment - A plaintiff should show, prima facie, that his claim is bonafide and also satisfy the court that defendant is about to remove or dispose of the whole or part of his property, with the intention of obstructing or delaying the execution of any decree that may be passed against him.* [Dharampal (Dead) Through L.Rs. Smt. Ashima Syal v. Hari Chandra @ Harish Chandra (Dead) Through L.Rs. Suresh Kumar Chaudhary] ...2313

Civil Procedure Code (5 of 1908), Order 38 Rule 5 - *Powers of Court* - *Plaintiffs have proved that they have substantive rights in their favour and prima facie defendants are enjoying the benefits of the suit property - Defendants published an advertisement with regard to sell of other land which is of the ownership of the defendants - In such circumstances, it is necessary to attach some property of the defendants or they may furnish some security to the satisfaction of the trial court - Defendants be directed to furnish a security of Rs.10 lacs before trial court - Petition disposed of accordingly.* [Dharampal (Dead) Through L.Rs. Smt. Ashima Syal v. Hari Chandra @ Harish Chandra (Dead) Through L.Rs. Suresh Kumar Chaudhary] ...2313

Civil Procedure Code (5 of 1908), Order 39 Rule 1 & 2 - *Temporary Injunction* - *No Khasra entry showing that before executing sale deed, the disputed land was recorded in the name of seller - At this stage it cannot be inferred that sale deeds were executed by rightful owners of the land - No prima facie case or balance of convenience in favor of appellants to hold their possession - No ground to issue any ad interim temporary injunction.* [Satyanarayan Agrawal v. State of M.P.] ...3178

Civil Procedure Code, (5 of 1908), Order 41 Rule 22 - See - *Motor Vehicles Act, 1988, Section 173.* [United India Insurance Company Ltd., Indore v. Smt. Ramtubai] ...3251

Civil Procedure Code (5 of 1908), Order 41 Rule 33 - *Power of Appellate Court* - *The appellate court has been conferred with the power not withstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection, then appellate court in exercise of powers vested under Order 41 Rule 33 can pass an order in favour of the respondents or parties although the*

प्रयास नही किया – एकपक्षीय कार्यवाही में यह आवश्यक नही था कि साक्षी को केवल उपस्थित होने और चले जाने के लिए कठघरे में लाया जाए – एकपक्षीय डिक्री पुष्ट। (रसिकलाल मानिकचंद धारीवाल एवं धारीवाल इंडस्ट्रीज लि. वि. मे. एम.एस.एस. फुड प्रोडक्टस्) ...3225

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 38 नियम 5 – निर्णय के पूर्व कुर्की – जहाँ प्रतिवादी को सम्पत्ति को पेश करने के लिए प्रतिभूति देने के लिए बुलाया जाए – अभिनिर्धारित – कोई प्रतिवादी, मात्र इसलिए कि निर्णय के पूर्व उसके विरुद्ध कोई वाद पेश किया गया है या पेश किया जाने वाला है, अपनी सम्पत्ति के बारे में व्यवहार करने से विवर्जित नहीं होता है – वादी को प्रथम दृष्ट्या यह दर्शित करना चाहिए कि उसका दावा सद्भाविक है और न्यायालय का समाधान करना चाहिए कि प्रतिवादी अपनी सम्पूर्ण सम्पत्ति या उसके भाग को, किसी डिक्री, जो उसके विरुद्ध पारित की जाए, के प्रवर्तन में बाधा या विलम्ब करने के आशय से, हटाने या व्ययनित करने वाला है। (धरमपाल (मृतक) द्वारा वैध प्रतिनिधि श्रीमति आशिमा स्याल वि. हरीचन्द्र उर्फ हरीश चन्द्र (मृतक) द्वारा वैध प्रतिनिधि सुरेश कुमार चौधरी) ...2313

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 38 नियम 5 – न्यायालय की शक्तियाँ – वादियों ने साबित किया कि उनके पक्ष में सारवान् अधिकार हैं और प्रथम दृष्ट्या प्रतिवादी वादग्रस्त सम्पत्ति के लाभों का उपभोग कर रहे हैं – प्रतिवादियों ने अन्य भूमि, जो प्रतिवादियों के स्वामित्व की है, के विक्रय के संबंध में विज्ञप्ति प्रकाशित की – इन परिस्थितियों में यह आवश्यक है कि प्रतिवादियों की कुछ सम्पत्ति कुर्क की जाए या वे विचारण न्यायालय के समाधान के लिए कुछ प्रतिभूति दें – प्रतिवादियों को विचारण न्यायालय के समक्ष 10 लाख रुपये की प्रतिभूति देने के लिए निदेशित किया – याचिका तदनुसार निपटाई गई। (धरमपाल (मृतक) द्वारा वैध प्रतिनिधि श्रीमति आशिमा स्याल वि. हरीचन्द्र उर्फ हरीश चन्द्र (मृतक) द्वारा वैध प्रतिनिधि सुरेश कुमार चौधरी) ...2313

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 1 व 2 – अस्थायी व्यादेश – कोई खसरा प्रविष्टि यह नही दर्शाती कि विक्रयपत्र के निष्पादन के पूर्व विवादित सम्पत्ति विक्रेता के नाम अभिलिखित थी – इस प्रक्रम पर यह अनुमान नही निकाला जा सकता कि विक्रयपत्र भूमि के अधिकारवान स्वामियों द्वारा निष्पादित किये गये – अपीलार्थियों का कब्जा अभिनिर्धारित करने के लिए कोई प्रथम दृष्ट्या मामला नही एवं उनके पक्ष में सुविधा का संतुलन भी नही – अंतःकालीन अस्थायी व्यादेश जारी करने का कोई आधार नही। (सत्यनारायण अग्रवाल वि. म.प्र. राज्य) ...3178

सिविल प्रक्रिया संहिता, (1908 का 5), आदेश 41 नियम 22 – देखें – मोटर यान अधिनियम, 1988, धारा 173 (यूनाईटेड इंड़िया इंश्योरेंस कं. लि., इंदौर वि. श्रीमति रमतू बाई) ...3251

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 33 – अपील न्यायालय की शक्तियाँ – अपील न्यायालय को शक्ति दी गई है जिसका प्रयोग न्यायालय द्वारा इस बात के होते हुए भी किया जा सकेगा कि अपील डिक्री के केवल भाग के बारे में है और यह शक्ति सभी प्रत्यर्थियों या पक्षकारों या उनमें से किसी के भी पक्ष में प्रयोग की जा सकेगी यद्यपि ऐसे प्रत्यर्थियों या पक्षकारों ने कोई भी भी अपील या आक्षेप फाइल न किया गया हो तब अपील न्यायालय आदेश 41 नियम 33 के अधीन प्राप्त शक्तियों का प्रयोग कर प्रत्यर्थियों या पक्षकारों के पक्ष में आदेश पारित

respondents have not preferred any appeal or objection. [Sushil Kumar Kanungo v. M.P. Rajya Sahkari Bank Maryadit] ...2238

Civil Procedure Code, (5 of 1908), Order 41 Rule 33 - See - *Motor Vehicles Act, 1988, Section 170* [Samundra Devi v. Narendra Kaur]SC ...2743

Civil Services (Classification, Control and Appeal) Rules, M.P., 1966, Rule 9 - *When there is an order of acquittal in a criminal case - There is nothing in the rule relating to the spectrum of deemed suspension.* [M.P. State Civil Supplies Corporation Ltd. v. Vinod Kumar Save] ...2213

Civil Services (Classification, Control and Appeal) Rules, M.P., 1966, Rule 9(1) - *Petitioner, an employee of Corporation acquitted of all charges against him under IPC & Prevention of Corruption Act, 1988 - Representation for revocation of suspension order rejected on the ground of pending appeal against order of acquittal - Learned Single Judge quashed order of suspension and directed employer to reinstate - Held - The rule is absolutely silent as regards the situation when a judgment of acquittal recorded against the employee - However, employee can revert back to service after acquittal - Otherwise it may cause immense hardship to employee to wait for the final adjudication of matter by the final court.* [M.P. State Civil Supplies Corporation Ltd. v. Vinod Kumar Save] ...2213

Civil Services (General Conditions of Service) Rules, M.P. 1961, Rule 12(2)(b) & (c) (As amended w.e.f. 2nd April 1998) - ***Applicability*** - *Rule 12(2)(b) & (c) shall apply with retrospective effect.* [Hemchandra Pandey (Dr.) v. State of M.P.] ...2548

Civil Services (General Conditions of Service) Rules, M.P. 1961, Rule 12(2)(c) - ***Determination of Seniority*** - *Transfer on deputation to another department and subsequently absorption in that department - Past service for determining seniority can be counted only subject to equivalence of post - Nature of duties, minimum qualifications, responsibilities and powers exercised by an officer holding post, extent of territorial or other charge held, salary for post are to be considered - Merely because payscale in parent department and absorption is same itself is not determinative factor.* [Hemchandra Pandey (Dr.) v. State of M.P.] ...2548

Civil Services (Pension) Rules, M.P. 1976, Rule 9 - See - *Constitution, Article 226* [Vishnu Vakil v. State of M.P.] ...2609

Civil Services (Pension) Rules, M.P. 1976, Rules 9(2), 9(4) - ***Order of withholding 30% pension for one year*** - *In D.E. petitioner was found guilty of unauthorized absence and non-compliance of order of transfer - Representation of petitioner against show cause was not found satisfactory - Meanwhile petitioner retired and order of imposing penalty of withholding 30% pension passed after 5 years of his retirement - Held - Departmental*

कर सकती है यद्यपि प्रत्यर्थियों ने कोई अपील या आक्षेप दाखिल न किया हो। (सुशील कुमार कानूनगो वि. एम.पी. राज्य सहकारी बैंक मर्यादित) ...2238

सिविल प्रक्रिया संहिता, (1908 का 5), आदेश 41 नियम 33 – देखें – मोटर यान अधिनियम, 1988, धारा 170 (समुन्द्रा देवी वि. नरेन्द्र कौर) SC --- 2743

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र., 1966, नियम 9 – जब किसी आपराधिक मामले में दोषमुक्ति का आदेश हो – नियम में समझे गये निलम्बन के प्रतिबिम्ब के संबंध में कुछ नही है। (म.प्र. स्टेट सिविल सप्लाईस् कापोरेशन लि. वि. विनोद कुमार सावे)...2213

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र., 1966, नियम 9(1) – याची, निगम का एक कर्मचारी, उसके विरुद्ध भा.द.सं. और भ्रष्टाचार निवारण अधिनियम, 1988 के अधीन सभी आरोपों से दोषमुक्त किया गया – निलंबन आदेश के प्रतिसंहरण का अभ्यावेदन दोषमुक्ति के आदेश के विरुद्ध अपील लम्बित होने के आधार पर अस्वीकार किया गया – विद्वान एकल न्यायाधीश ने निलंबन का आदेश अभिखंडित किया और पुनर्नियुक्ति करने के लिए नियोक्ता को निदेशित किया – अभिनिर्धारित – उस दशा के सम्बन्ध में जब कर्मचारी के विरुद्ध दोषमुक्ति का निर्णय अभिलिखित किया जाता है, नियम बिल्कुल मौन है – तथापि कर्मचारी दोषमुक्ति के पश्चात् सेवा में वापस लौट सकता है – अन्यथा यह अंतिम न्यायालय द्वारा मामले का अंतिम न्यायनिर्णयन के लिए इंतजार करने वाले कर्मचारी को अत्यधिक कष्ट कारित कर सकता है। (म.प्र. स्टेट सिविल सप्लाईस् कापोरेशन लि. वि. विनोद कुमार सावे) ...2213

सिविल सेवा (सेवा की सामान्य शर्तें) नियम, म.प्र. 1961, नियम 12(2)(बी) व (सी) (2 अप्रेल 1998 से यथासंशोधित) – प्रयोज्यता – नियम 12(2)(बी) व (सी) भूतलक्षी प्रभाव से लागू होंगे। (हेमचंद्र पाण्डे वि. म.प्र. राज्य) ...2548

सिविल सेवा (सेवा की सामान्य शर्तें) नियम, म.प्र. 1961, नियम 12(2)(सी) – वरिष्ठता का अवधारण – प्रतिनियुक्ति पर दूसरे विभाग में स्थानांतरण और बाद में उस विभाग में विलयन – वरिष्ठता अवधारित करने के लिए पिछली सेवा केवल पद की तुल्यता के अध्यधीन गिनी जा सकती है – कर्तव्य की प्रकृति, न्यूनतम अर्हताऐं, दायित्व और पद को धारित करते हुए किसी अधिकारी द्वारा प्रयोग की गई शक्तियाँ, क्षेत्रीय विस्तार या धारित अन्य भार, पद के लिए वेतन विचारित किये जाने चाहिए – केवल इसलिए कि मूल विभाग और विलयन में वेतनमान समान है स्वयं अवधारक कारक नही है। (हेमचंद्र पाण्डे वि. म.प्र. राज्य) ...2548

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9 – देखें – संविधान, अनुच्छेद 226 (विष्णु वकील वि. म.प्र. राज्य) ...2609

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9(2), 9(4) – एक वर्ष के लिए 30 प्रतिशत पेंशन रोकने का आदेश – विभागीय जांच में याची को अनधिकृत अनुपस्थिति और स्थानांतरण आदेश के अपालन का दोषी पाया गया – कारण बताओ सूचनापत्र के विरुद्ध याची का अभ्यावेदन संतोषजनक नहीं पाया गया – इसी बीच याची सेवानिवृत्त हो गया और 30 प्रतिशत पेंशन रोकने का दण्ड अधिरोपित करने का आदेश उसकी सेवानिवृत्ति के 5 वर्ष बाद पारित किया गया – अभिनिर्धारित – विभागीय कार्यवाहियाँ तब समाप्त होती हैं जब अनुशासनिक प्राधिकारी जाँच रिपोर्ट

proceedings come to an end when disciplinary authority on consideration of enquiry report either exonerate or imposes punishment - Although enquiry report was submitted before retirement but order imposing penalty was passed after 5 years of retirement - Order passed against Rule 9(4) quashed - Petition allowed. [Krishnalal (Dr.) v. State of M.P.] ...3128

Commercial Tax Act, M.P., 1994 (5 of 1995), Entry No.22 in Part I of Schedule II, Entry No.22 in Part V of Schedule II, Entry No.39 in Part IV - *Reference made to 5 judges bench to decide "Whether the coal ash is a part of cinder and covered by the term coal in Entry No.22 in Part V of Schedule II of the Commercial Tax Act or the said commodity would be taxable under Entry No.39 in Part IV ?" - Held - "Coal Ash" is "Cinder" and covered by the term "Coal" in Entry No.22 in Part V of Schedule II and therefore it is not exigible to tax under Entry No.39 in Part IV. Further it has been held that judgment in Hukumchand Mills case de hors the earlier decisions and the view expressed therein with regard to Cinder (Coal Ash) being different commodity from its parent coal - Overruled to the extent that Cinder is not Coal - Appeal dismissed accordingly - State preferred an appeal against order of Single Judge, holding that - "The rate of tax on the sale of Coal Ash would be same as that of Coal and not prescribed under residuary entry", on the ground that it is against the ratio decided by 3 Judges bench in Hukumchand Mills Ltd. Vs. Commercial Tax MP [1988] 71 STC 101 - Hence this Reference.* [Additional Commissioner of Sales Tax v. M/s. S. Kumar Limited] (FB)...2156

Constitution, Article 14, *Education Guarantee Scheme - Payment of Honorarium* - *Petitioner appointed as Shiksha Karmi and was not paid enhanced honorarium on the ground that he was not fulfilling the conditions mentioned in circular dated 26.07.2003 - Action challenged on the ground that respondents are trying to create two classes of Guruji (Shiksha Karmi) which is violation of Article 14 - Held - Under Article 14 a valid classification is permitted but class legislation is not permitted - However, it is neither in accordance with the Education Guarantee Scheme nor the respondents have mentioned sufficient reasons in the return - Classification and conditions laid down by the circular are illegal and arbitrary - Petition allowed.* [Brajesh Kumar Tiwari v. C.E.O. Zila Panchayat, Shivpuri] ...2292

Constitution, Article 14 - *Service Law* - Promotion - Denial of promotion *to petitioner on account of two adverse entries in his preceding five years ACRs - One adverse entry was never communicated and the other which was though communicated but petitioner's representation against it was not decided - Held - Non-communication of an entry in the ACRs and the denial of opportunity to represent against it, are violation of natural justice - Impugned order set-aside-petition allowed.* [Om Prakash Lashkari v. State of M.P.] ...2863

पर विचार करने पर या तो दण्ड मुक्त करता है या दण्ड अधिरोपित करता है – यद्यपि जाँच रिपोर्ट सेवानिवृत्ति के पूर्व पेश की गई किन्तु शास्ती अधिरोपित करने वाला आदेश सेवानिवृत्ति के पाँच वर्ष बाद पारित किया गया – नियम 9(4) के विरुद्ध पारित आदेश अभिखण्डित – याचिका मंजूर। (कृष्णलाल (डॉ.) वि. म.प्र. राज्य) ...3128

वाणिज्यिक कर अधिनियम, म.प्र., 1994 (1995 का 5), अनुसूची II के भाग I में प्रविष्टि क्र. 22, अनुसूची II के भाग V में प्रविष्टि क्र. 22, भाग IV में प्रविष्टि क्र. 39 – 5 जजों की न्यायपीठ को यह विनिश्चित करने के लिए निर्देश कि "क्या कोयला भस्म सिंडर का भाग है और वाणिज्यिक कर अधिनियम की अनुसूची II के भाग V में प्रविष्टि क्र. 22 में कोयला शब्द के अन्तर्गत आती है या उक्त वस्तु भाग IV में प्रविष्टि क्र. 39 के अन्तर्गत कर योग्य होगी ?" – अभिनिर्धारित – "कोयला भस्म" "सिंडर" है और अनुसूची II के भाग V में प्रविष्टि क्र. 22 में कोयला शब्द के अन्तर्गत आती है इसलिए यह भाग IV में प्रविष्टि क्र. 39 के अन्तर्गत कर के आहरण योग्य नही है। आगे यह अभिनिर्धारित किया गया कि हुकुमचंद मिल के मामले में दिया गया निर्णय पूर्व विनिश्चयों से असम्बद्ध है और सिंडर (कोयला भस्म) उसके मूल कोयले से भिन्न वस्तु होने के संबंध में उसमें अभिव्यक्त किया गया विचार – इस सीमा तक कि सिंडर कोयला नही है उलट दिया गया – अपील तदनुसार खारिज की गई – राज्य ने एकल न्यायाधीश के आदेश के विरुद्ध अपील पेश की, अभिनिर्धारित कि – "कोयला भस्म के विक्रय पर कर की दर वही होगी जो जो कोयले पर है न कि अवशिष्ट प्रविष्टि के अन्तर्गत विहित दर", इस आधार पर कि यह 3 जजों की न्यायपीठ द्वारा हुकुमचंद मिल लि. बनाम् वाणिज्यिक कर म.प्र. (1988) 71 एसटीसी 101 में विनिश्चित अनुपात के विपरीत है – इसलिए यह निर्देश। (एडीशनल कमिश्नर आफ सेल्स टेक्स वि. मेसर्स एस. कुमार लि.) (FB)---2156

संविधान, अनुच्छेद 14, शिक्षा गारंटी योजना – मानदेय का भुगतान – याची शिक्षाकर्मी के रूप में नियुक्त हुआ और उसे बढ़ा हुआ मानदेय इस आधार पर नहीं दिया गया कि वह परिपत्र तारीख 26.07.2003 में वर्णित शर्तों को पूरा नहीं कर रहा था – कृत्य को इस आधार पर चुनौती दी गई कि प्रत्यर्थी, गुरुजी (शिक्षाकर्मी) के दो वर्ग निर्मित करने का प्रयास कर रहे हैं जो अनुच्छेद 14 का उल्लंघन है – अभिनिर्धारित – अनुच्छेद 14 के अन्तर्गत एक वैध वर्गीकरण अनुज्ञात है किन्तु वर्ग विधायन अनुज्ञात नही है – तथापि, यह न तो शिक्षा गारंटी योजना के अनुरूप है और न ही प्रत्यर्थियों ने रिटर्न में पर्याप्त कारण उल्लिखित किये हैं – वर्गीकरण और परिपत्र द्वारा अधिकथित शर्तें अवैध और मनमानी हैं – याचिका मंजूर। (ब्रजेश कुमार तिवारी वि. सी.ई.ओ. जिला पंचायत, शिवपुरी) ...2292

संविधान, अनुच्छेद 14 – सेवा विधि – पदोन्नति – याची के पूर्ववर्ती पाँच वर्षों के वार्षिक गोपनीय प्रतिवेदनों में दो प्रतिकूल प्रविष्टियाँ होने के कारण याची को पदोन्नति देने से इंकार – एक प्रतिकूल प्रविष्टि कभी संसूचित नही की गई और दूसरी जो यद्यपि संसूचित की गई किन्तु इसके विरुद्ध याची का अभ्यावेदन विनिश्चित नही किया गया – अभिनिर्धारित – वार्षिक गोपनीय प्रतिवेदनों में प्रविष्टि संसूचित न करना और उसके विरुद्ध अभ्यावेदन करने के अवसर से इंकारी नैसर्गिक न्याय का उल्लंघन है – आक्षेपित आदेश अपास्त – याचिका मंजूर। (ओम प्रकाश लश्करी वि. म.प्र. राज्य) ...2863

Constitution, Articles 14, 16, 21, 226, 227, 257, 323-A, 323-B, Administrative Tribunal Act, 1985, Section 3(q) & 14, Reorganisation Act, M.P. 2000, Section 72 - *Maintainaility of writ petition at the first instance in respect of service matter pertaining to a member of All India Services - Petitioner, member of All India Services incorrectly allocated to State of Chhattisgarh - Central Government cancelled the order and directed M.P. State Government to issue posting orders - Order not complied - Writ petition filed before High Court - Held - With regard to 'service matters' and service dispute relating to an employee of All India Services the court of first instance where the matter should be agitated is to CAT - Jurisdiction to deal with the matter vests exclusively with the CAT - Against the order passed by CAT matter has to be agitated under Article 226 & 227 before High Court - Petition dismissed with liberty to take recourse to the remedy available under the Act of 1985.* [Vinay Shukla v. State of M.P.] ...2898

Constitution, Article 14, 16 & 226, Rajya Prashasnik Adhikaran (Lambit Evam Nirakrat Avedano Ka Antaran) Adhyadesh, M.P. 2003, Administrative Tribunals Act, 1985, Section 21 - *Appointment without any advertisement or calling names from Employment Exchange - Challenged before M.P. Administrative Tribunal - Application transferred to High Court upon abolition of Tribunal - Plea of limitation u/s 21 of Act of 1985 - Held - After transfer to High Court, cases are registered and decided treating to be writ petition under Article 226/227 - Section 21 of the Act of 1985 can not curtail jurisdiction under Article 226/227 - Appointments without advertisement and calling names from Employment Exchange - Violative of Article 14 & 16 - Hence quashed - However, appointees worked for 10 years and crossed upper age limit prescribed for public employment - Allowed to participate in fresh recruitment process and their application form shall not be rejected on the ground of age limit - Petition allowed.* [Nandkishore Narolia v. State of M.P.] ...2591

Constitution, Articles 14, 16, 233, 235 - See - *Uchchatar Nyayik Sewa (Bharti Tatha Sewa Sharten) Niyam, 1994, Rule 5(1) Second Proviso.* [Y.D. Shukla v. High Court of Judicature of M.P. At Jabalpur] ... 2577

Constitution, Articles 14, 226 - *Govt. Contract - Eligibility Criteria* - *Earlier, Petitioner Company was working in the name of M/s Tejas Construction and M/s Agrawal Brothers - M/s Tejas Construction converted into Petitioner Company and M/s Agrawal Brothers purchased by petitioner company through sale deed - Documents not considered on the ground of non-submission of dissolution deed of M/s Agrawal Brothers and non-registration of sale deed - Reason of non-submission of dissolution deed explained in sale deed - No objection by any partners of M/s Agrawal Brothers - In the sale deed it was specifically mentioned that partners shall*

संविधान, अनुच्छेद 14, 16, 21, 226, 227, 257, 323–ए, 323–बी, प्रशासनिक अधिकरण अधिनियम, 1985, धारा 3(क्यू) व 14, पुनर्गठन अधिनियम, म.प्र. 2000, धारा 72 – अखिल भारतीय सेवा के किसी सदस्य से सम्बन्धित सेवा मामले के सम्बन्ध में प्रथम अवसर पर रिट याचिका की पोषणीयता – याची, अखिल भारतीय सेवा के सदस्य को गलत रूप से छत्तीसगढ़ राज्य को आबंटित किया गया – केन्द्र सरकार ने आदेश रद्द किया और म.प्र. राज्य सरकार को पदस्थापना आदेश जारी करने का निदेश दिया – आदेश का पालन नही किया गया – रिट याचिका उच्च न्यायालय के समक्ष पेश की गई – अभिनिर्धारित – 'सेवा मामलों' और अखिल भारतीय सेवा के कर्मचारी से सम्बन्धित सेवा विवाद के सम्बन्ध में प्रथम अवसर का न्यायालय, जहाँ मामला उठाया जाना चाहिए, केन्द्रीय प्रशासनिक अधिकरण है – मामले पर कार्यवाही करने की अधिकारिता अनन्य रूप से केन्द्रीय प्रशासनिक अधिकरण में निहित है – केन्द्रीय प्रशासनिक अधिकरण द्वारा पारित आदेश के विरुद्ध मामला संविधान के अनुच्छेद 226 व 227 के अन्तर्गत उच्च न्यायालय के समक्ष उठाया जाना चाहिए – याचिका 1985 के अधिनियम के अन्तर्गत उपलब्ध उपचार का आश्रय लेने की स्वतंत्रता के साथ खारिज की गई। (विनय शुक्ला वि. म.प्र. राज्य) ...2898

संविधान, अनुच्छेद 14, 16 व 226, राज्य प्रशासनिक अधिकरण (लंबित एवं निराकृत आवेदनों का अंतरण) अध्यादेश, म.प्र. 2003, प्रशासनिक अधिकरण अधिनियम, 1985, धारा 21 – किसी विज्ञापन या रोजगार कार्यालय से नाम माँगे बिना नियुक्ति – म.प्र. प्रशासनिक अधिकरण के समक्ष चुनौती दी गई – अधिकरण के समापन पर आवेदन उच्च न्यायालय को अंतरित किया गया – 1985 के अधिनियम की धारा 21 के अन्तर्गत परिसीमा का अभिवचन – अभिनिर्धारित – उच्च न्यायालय को अंतरण के पश्चात् मामले अनुच्छेद 226/227 के अन्तर्गत रिट याचिका के रूप में दर्ज और विनिश्चित किये गये – 1985 के अधिनियम की धारा 21 अनुच्छेद 226/227 की अधिकारिता को कम नहीं कर सकती है – नियुक्तियाँ किसी विज्ञापन और रोजगार कार्यालय से नाम माँगे बिना की गईं – अनुच्छेद 14 व 16 का उल्लंघन है – इसलिए अभिखंडित की गईं – तथापि, नियुक्त व्यक्तियों ने 10 वर्ष कार्य किया और लोक नियोजन के लिए विहित उच्च आयु सीमा पार कर ली – नई नियुक्ति प्रक्रिया में भाग लेने के लिए अनुमत किया और उनके आवेदनपत्र आयु सीमा के आधार पर निरस्त नही किये जाऐं – याचिका मंजूर। (नंदकिशोर नारोलिया वि. म.प्र. राज्य) ...2591

संविधान, अनुच्छेद 14, 16, 233, 235 – देखें – उच्चतर न्यायिक सेवा (भर्ती तथा सेवा शर्तें) नियम, 1994, नियम 5(1) द्वितीय परन्तुक (वाय.डी. शुक्ला वि. हाई कोर्ट ऑफ जूडिकेचर ऑफ एम.पी. एट जबलपुर) ...2577

संविधान, अनुच्छेद 14, 226 – शासकीय संविदा – पात्रता मानदंड – पूर्व में याची कम्पनी मे. तेजस कंस्ट्रक्शन एवं मे. अग्रवाल ब्रदर्स के नाम से कार्य कर रही थी – मे. तेजस कंस्ट्रक्शन याची कम्पनी में संपरिवर्तित हो गई और मे. अग्रवाल ब्रदर्स को याची कम्पनी द्वारा विक्रय विलेख के माध्यम से क्रय कर लिया – मे. अग्रवाल ब्रदर्स का विघटन विलेख प्रस्तुत न करने और विक्रय विलेख के अरजिस्ट्रीकरण के आधार पर दस्तावेजों पर विचार नहीं किया गया – विघटन विलेख प्रस्तुत न करने का कारण विक्रय विलेख में स्पष्ट किया गया – मे. अग्रवाल ब्रदर्स के किसी भागीदार द्वारा कोई आपत्ति नहीं – विक्रय विलेख में यह विशिष्ट रूप से उल्लिखित किया गया कि भागीदार याची कम्पनी को फर्म द्वारा प्राप्त अनुभव प्रमाण–पत्र को प्रस्तुत करने को अनुज्ञात करेंगे – अभिनिर्धारित – अनुभव प्रमाण–पत्र को अस्वी.त किया जाना और याची की निरर्हता मनमानी,

allow the petitioner company to submit experience certificate gained by firm - Held Rejection of experience certificate and disqualification of petitioner arbitrary, baseless and hyper technical - Petition allowed. [Tejas Construction & Infrastructure Pvt. Ltd. v. Municipality Sanawad] ...2305

Constitution, Article 16(4A) [77th and 85th Amendment], Public Services (Promotion) Rules, M.P. 2002, Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhada Vargon Ke Liye Arakshan) Ahiniyam, M.P. 1994 - *Appellant appointed as A.E. in P.W.D. - Private respondents were senior to appellant - Appellant granted promotion in the year 1980 to the post of E.E. against post reserved for Scheduled Caste - Respondents promoted in the year 1985 to the post of E.E. as posts in General category were not available at the time of promotion of appellant - Tribunal directed for placing General promotees above as seniority was to be counted on the basis of feeder cadre - Held - The 85th amendment in Article 16(4A) came into force w.e.f. 17.06.1995 - State Govt. framed Rules 2002 enabling benefit to SC/ST candidates who got promotion against reserved post - Rules 2002 came into force in the year 2002 whereas issue triggered in the year 1985 and Rules were not in force - Neither 77th nor 85th amendment has been made applicable from the year 1985 - As per circular of 1975 appellant was only entitled for accelerated promotion but not seniority - Appellant not entitled for seniority on the basis of his promotion against reserved post - Appeal dismissed.* [Shiv Nath Prasad v. Saran Pal Jeet Singh Tulsi] SC...3059

Constitution, Article 19, Foreign Liquor Rules, M.P. 1996, Rule 8 - ***For the year 2006-07 Government has taken decision that licence of existing licence holders shall be renewed after payment of 20% extra licence fee*** - *It is contended that this decision is contrary to the provision of Rule 8 of Rules 1996 - It is further contended that such a policy restrained from applying a new person for licence and this policy is violative of Fundamental Rules and Article 19 of the Constitution - Held - Provision of Rule 8(a) is amply clear that the State Government is having power to issue direction from time to time with regard to the grant of licence in form FL-1 and under this provision if direction has been issued or the policy decision has been taken that is within the power of Government - No case is made out for interference.* [Madan Mohan Chaturvedi v. State of M.P.] ...2776

Constitution, Article 20(2) - See - *Penal Code 1860, Sections 147, 149, 294, 341, 323, 506-B, 307* [Rajkumar v. State of M.P.] ...2478

Constitution, Article 21 - ***Handcuffing*** - *Appellant handcuffed by police - No reasons given by State that why such handcuffing was necessary - Appellant entitled for compensation.* [Hardeep Singh Anand v. State of M.P.] ...3068

Constitution, Article 21 - ***Speedy trial - Delay in trial*** - *Delay of five years in trial on account of State not taking timely steps in producing and*

आधारहीन और अति तकनीकी – याचिका मंजूर। (तेजस कंस्ट्रक्शन एन्ड इन्फ्रास्ट्रक्चर प्रा. लि. वि. म्युनिस्पेलिटी सनावद) ...2305

संविधान, अनुच्छेद 16(4ए) 77वां और 85वां संशोधन,, लोक सेवा (पदोन्नति) नियम, म.प्र. 2002, लोक सेवा (अनुसूचित जाति, अनुसूचित जनजाति और अन्य पिछड़ा वर्गों के लिये आरक्षण) अधिनियम, म.प्र. 1994 – अपीलार्थी पी.डब्ल्यू.डी. में सहायक यंत्री के रूप में नियुक्त किया गया – गैरसरकारी प्रत्यर्थी अपीलार्थी से वरिष्ठ थे – अपीलार्थी को वर्ष 1980 में अनुसूचित जाति के लिए आरक्षित पद के विरुद्ध कार्यपालक यंत्री के पद पर पदोन्नति प्रदान की गयी – प्रत्यर्थियों को वर्ष 1985 में कार्यपालक यंत्री के पद पर पदोन्नत किया गया क्योंकि अपीलार्थी की पदोन्नति के समय सामान्य श्रेणी में पद उपलब्ध नही थे – अधिकरण ने सामान्य पदोन्नत व्यक्तियों को ऊपर रखने के निर्देश दिये क्योंकि वरिष्ठता की गणना भरक संवर्ग के आधार पर करनी थी – अभिनिर्धारित – अनुच्छेद 16(4ए) में 85वां संशोधन 17.06.1995 से प्रवर्तन में आया था – राज्य सरकार ने अनुसूचित जाति/अनुसूचित जनजाति के अभ्यर्थियों, जिन्होंने आरक्षित पद पर पदोन्नति पायी, को लाभ देने के लिए नियम 2002 बनाये – न तो 77वां और न ही 85वां संशोधन वर्ष 1985 से लागू किया गया है – 1975 के परिपत्र के अनुसार अपीलार्थी केवल त्वरित पदोन्नति का हकदार था न कि वरिष्ठता का – अपीलार्थी आरक्षित पद पर उसकी पदोन्नति के आधार पर वरिष्ठता का हकदार नही – अपील खारिज। (शिवनाथ प्रसाद वि. सरन पाल जीत सिंह तुलसी) SC---3059

संविधान, अनुच्छेद 19, विदेशी मदिरा नियम, म.प्र. 1996, नियम 8 – वर्ष 2006–07 के लिए सरकार ने निर्णय लिया कि विद्यमान लायसेंस धारकों के लायसेंस 20 प्रतिशत अतिरिक्त लायसेंस शुल्क भुगतान करने पर नवीनीकृत किये जायेंगे – यह प्रतिवादित किया गया कि यह निर्णय नियम 1996 के नियम 8 के उपबंध के प्रतिकूल है – यह भी प्रतिवादित किया गया कि ऐसी नीति नये व्यक्तियों को लायसेंस के लिए आवेदन करने से प्रतिषिद्ध करती है और यह नीति मूलभूत नियम और संविधान के अनुच्छेद 19 के अतिक्रमणकारी हैं – अभिनिर्धारित – नियम 8(ए) का उपबंध व्यापक रूप से स्पष्ट है कि राज्य सरकार को प्रारूप एफएल–1 में लायसेंस प्रदान करने के सम्बन्ध में समय–समय पर निदेश जारी करने की शक्ति है और इस उपबंध के अन्तर्गत यदि निदेश जारी किया गया है या नीति निर्णय लिया गया है वह सरकार की शक्ति के अन्तर्गत है – हस्तक्षेप के लिए कोई मामला नही बनता। (मदन मोहन चतुर्वेदी वि. म.प्र. राज्य) ...2776

संविधान, अनुच्छेद 20(2) – देखें –दण्ड संहिता 1860, धाराएँ 147, 149, 294, 341, 323, 506–बी, 307 (राजकुमार वि. म.प्र. राज्य) ...2478

संविधान, अनुच्छेद 21 – हथकड़ी लगाना – पुलिस द्वारा अपीलार्थी को हथकड़ी लगाई गई – राज्य द्वारा कोई कारण नही दिया गया कि हथकड़ी लगाना क्यों आवश्यक था – अपीलार्थी प्रतिकर का हकदार। (हरदीप सिंह आनंद वि. म.प्र. राज्य) ...3068

संविधान, अनुच्छेद 21 – त्वरित विचारण – विचारण में विलम्ब – राज्य द्वारा अभियोजन की ओर से साक्षियों को पेश करने और उनकी परीक्षा कराने में कार्यवाही न करने के कारण

examining witnesses on behalf of prosecution - Appellant ultimately acquitted by trial court - Appellant entitled for compensation as speedy trial is integral and essential part of fundamental right to life and liberty. [Hardeep Singh Anand v. State of M.P.] ...3068

Constitution, Article 21 - ***Writ jurisdiction*** - *Violation of fundamental right - State can be directed to pay compensation to a person whose rights under Article 21 are affected.* [Hardeep Singh Anand v. State of M.P.]...3068

Constitution, Articles 21 & 38 - *Government must made endeavour to eliminate inequality in status, facility and opportunity.* [Nilesh Singhal v. State of M.P.] ...2264

Constitution, Articles 216, 225, 226, State Reorganisation Act, 1956, Sections 54 & 68, Government of India Act, 1915, Section 106, High Court Rules and Orders, M.P., Section 3, Court Fees Act, 1870, Section 35 - ***Public Interest Litigation*** - *In order to regulate filing of PIL, the Division Bench in its order dated 09.09.1999 in W.P. No.988/1999 issued certain directions including security deposit - Matter referred by the Division Bench to Full Bench after framing 5 substantial question of law - Held - Answering the reference the Full Bench held that the directions contained in the order dated 09.09.1999 passed in W.P. No.988/1999 by Division Bench of this Court will no longer hold good and that the rules in Section 3 of the High Court Rules for proceedings under Article 226 of the Constitution made under Article 225 of the Constitution and Clause 27 of the Letters Patent made by the High Court of Judicature, Nagpur, as amended from time to time, will continue to apply to all Public Interest Litigations filed under Article 226 of the Constitution until replaced or amended by rules made by the High Court of M.P. in exercise of its powers u/s 54 of the Act of 1956 r/w Article 225 of the Constitution.* [S.P. Anand v. The Registrar General, M.P. High Court, Jabalpur] (FB)...2172

Constitution, Article 216, 225, 226, State Reorganisation Act, 1956, Section 54 & 68, Government of India Act, 1915, Section 106, High Court Rules and Orders, M.P., Section 3 - ***Public Interest Litigation*** - *Powers to make Rules - These rules and orders do not provide for security deposit to be made along with a writ petition filed under Article 226 of the Constitution and it is only the High Court comprising of the Chief Justice and all Judges of the High Court of M.P. appointed by the President or a Committee of the High Court Judges or a Judge authorized to make orders or rules relating to practice and procedure of the High Court, which could make fresh orders or rules providing for a security deposit along with every PIL filed to prevent the abuse of PILs and hence the order dated 09.09.1999 of the Division Bench in W.P. No.988/1999 was without jurisdiction.* [S.P. Anand v. The Registrar General, M.P. High Court, Jabalpur] (FB)...2172

Constitution, Article 226, Ancient Monuments and Archaeological

विचारण में पाँच वर्ष का विलम्ब – विचारण न्यायालय द्वारा अपीलार्थी को अंतिमतः दोषमुक्त किया गया – अपीलार्थी प्रतिकर का हकदार क्योंकि त्वरित विचारण जीवन और स्वतंत्रता के मूल अधिकार का अभिन्न और आवश्यक अंग है। (हरदीप सिंह आनंद वि. म.प्र. राज्य) ...3068

संविधान, अनुच्छेद 21 – रिट अधिकारिता – मूल अधिकारों का अतिक्रमण – उस व्यक्ति को, जिसके अनुच्छेद 21 के अन्तर्गत अधिकार प्रभावित हुए हैं, प्रतिकर का संदाय करने के लिए राज्य को निदेशित किया जा सकता है। (हरदीप सिंह आनंद वि. म.प्र. राज्य) ...3068

संविधान, अनुच्छेद 21 व 38 – सरकार को प्रतिष्ठा, सुविधा और अवसर में असमानता दूर करने का प्रयत्न करना चाहिए। (नीलेश सिंघल वि. म.प्र. राज्य) ...2264

संविधान, अनुच्छेद 216, 225, 226, राज्य पुनर्गठन अधिनियम, 1956, धाराएँ 54 व 68, भारत शासन अधिनियम, 1915, धारा 106, उच्च न्यायालय नियम और आदेश, म.प्र., धारा 3, न्यायालय फीस अधिनियम, 1870, धारा 35 – लोक हित वाद – पीआईएल का पेश किया जाना नियंत्रित करने क्रम में, खण्ड न्यायपीठ ने रिट याचिका क्रमांक 988/1999 में अपने आदेश तारीख 09.09.1999 में प्रतिभूति निक्षेप को सम्मिलित करते हुए कुछ निदेश जारी किये – मामला खण्ड न्यायपीठ द्वारा 5 विधि के सारवान प्रश्न विरचित करने के उपरांत पूर्ण न्यायपीठ को निर्देशित किया – अभिनिर्धारित – निर्देश उत्तरित करते हुए पूर्ण न्यायपीठ ने अभिनिर्धारित किया कि इस न्यायालय की खण्ड न्यायपीठ द्वारा रिट याचिका क्र. 988/1999 में पारित आदेश तारीख 09.09.1999 में अन्तर्विष्ट निदेश इससे अधिक अच्छे धारित नही होंगे और संविधान के अनुच्छेद 226 के अन्तर्गत कार्यवाहियों के लिए संविधान के अनुच्छेद 225 के अन्तर्गत निर्मित उच्च न्यायालय नियम की धारा 3 व उच्च न्यायालय, नागपुर द्वारा निर्मित लेटर पेटेंट का खण्ड 27, समय–समय पर यथा संशोधित, सभी लोक हित वादों को लागू होना जारी रहेंगे जब तक कि 1956 के अधिनियम की धारा 54 सहपठित संविधान के अनुच्छेद 225 के अधीन शक्तियों के प्रयोग में उच्च न्यायालय द्वारा निर्मित नियमों द्वारा प्रतिस्थापित या संशोधित नही कर दिये जाते। (एस.पी. आनंद वि. द रजिस्ट्रार जनरल, एम.पी. हाई कोर्ट, जबलपुर) (FB)---2172

संविधान, अनुच्छेद 216, 225, 226, राज्य पुनर्गठन अधिनियम, 1956, धाराएँ 54 व 68, भारत शासन अधिनियम, 1915, धारा 106, उच्च न्यायालय नियम और आदेश, म.प्र., धारा 3 – लोक हित वाद – नियम बनाने की शक्ति – ये नियम व आदेश संविधान के अनुच्छेद 226 के अधीन पेश रिट याचिका के साथ प्रतिभूति निक्षेप करने के लिए उपबंध नही करते और यह केवल उच्च न्यायालय, जिसमें राष्ट्रपति द्वारा नियुक्त म.प्र. उच्च न्यायालय के मुख्य न्यायाधीश व सभी न्यायाधीश या उच्च न्यायालय के न्यायाधीशों की समिति या उच्च न्यायालय की पद्धति और प्रक्रिया से संबंधित आदेशों या नियमों को बनाने के लिए अधिनत न्यायाधीश समाविष्ट हैं जो लोक हित वादों का दुरुपयोग निवारित करने के लिए प्रत्येक पीआईएल के साथ प्रतिभूति निक्षेप के लिए उपबंध करने वाले नये आदेश या नियम निर्मित कर सकें और इसलिए खण्ड न्यायपीठ का रिट याचिका क्र. 988/1999 में आदेश तारीख 09.09.1999 अधिकारिता विहीन था। (एस.पी. आनंद वि. द रजिस्ट्रार जनरल, एम.पी. हाई कोर्ट, जबलपुर) (FB)---2172

संविधान, अनुच्छेद 226, प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम, म.प्र. (1964 का 12), धारा 2(ए), 2(सी), 3, प्राचीन संस्मारक तथा

Sites and Remains Act, M.P. (12 of 1964), Sections 2(a), 2(c), 3, Ancient Monuments and Archaeological Sites and Remains Rules, M.P., 1976, Rule 10 - *Fort at Sendhwa declared ancient monument - Notification declaring area upto 100 meters and further beyond it upto 200 meters from protected limits near or adjoining of protected monument as prohibited and regulated areas for mining and construction - Act and Rule regulats activities in the area and do not impose total ban on construction - However, Collector of District directed to ensure that no construction shall be permitted in prohibited area except in accordance with provision of Act and Rules - Petition disposed of.* [Mohammad Rafik Bhutto v. State of M.P.] ...2274

Constitution, Article 226, Civil Services (Pension) Rules, M.P. 1976, Rule 9 - *Service Law - Recovery by way of issuance of R.R.C. after retirement of employee - Allegation that while employee was posted as store keeper some articles were found missing and employee accepted the shortage of articles - Allegation not proved as department failed to produce any document - No adjudication of recovery by way of departmental or judicial proceeding - Held - Issuance of R.R.C. for recovery without departmental or judicial proceeding, not sustainable - R.R.C. quashed - Petition allowed.* [Vishnu Vakil v. State of M.P.] ...2609

Constitution, Article 226 - *Compassionate appointment - Father of petitioner died in harness on 18.05.1996 - Mother filed application for appointment of minor son - Application rejected with direction to submit fresh application on attaining majority - Fresh application filed on 06.07.2005 after attaining majority - Rejected on 18.06.2007 on the ground that Circular dated 22.01.2007 provides that if there is no eligible major member in the family of deceased, the compassionate appointment can be given only if the age of majority is attained within 7 years and if age of majority is attained by minor after 7 years there would not be eligibility - Held - Policy prevailing at the time of death and application of compassionate appointment made, has to be applied and not the policy which came into existence subsequently - Order rejecting compassionate appointment quashed - Petition allowed.* [Bhupendra Bairagi v. State of M.P.] ...2310

Constitution, Article 226 - *Compassionate appointment - Father of petitioner died on 18.12.1985 in harness - On obtaining majority petitioner applied for compassionate appointment on 01.09.2000 - Appointment - Cancellation of appointment on ground of subsequent policy dated 22.01.2007 in which compassionate appointment can be given only in case minor attains majority within 7 years of death of employee - Held - Policy prevailing at the time of application for compassionate appointment shall be applicable and not the policy which came into existence subsequently - Order of cancellation of appointment quashed - Petition allowed.* [Rakesh Jaju (Gupta) v. State of M.P.] ...*81

पुरातत्वीय स्थल और अवशेष नियम, म.प्र., 1976, नियम 10 – सेंधवा स्थित किला प्राचीन संस्मारक घोषित – अधिसूचना संरक्षित संस्मारक के निकट या लगे हुए क्षेत्र को संरक्षित सीमाओं से 100 मीटर तक और उसके पश्चात् आगे 200 मीटर तक खनन और निर्माण के लिए प्रतिषिद्ध और विनियमित क्षेत्र के रूप में घोषित करती है – अधिनियम और नियम क्षेत्र में क्रियाकलापों को विनियमित करते हैं और निर्माण पर पूर्ण पाबंदी अधिरोपित नहीं करते हैं – तथापि जिले के कलेक्टर ने यह सुनिश्चित करने के लिए निदेशित किया कि प्रतिषिद्ध क्षेत्र में अधिनियम और नियमों के उपबंध के अनुसार के अलावा कोई निर्माण अनुज्ञात नहीं होगा – याचिका निपटाई गई। (मोहम्मद रफीक भुट्टो वि. म.प्र. राज्य) ...2274

संविधान, अनुच्छेद 226, सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9 – सेवा विधि – कर्मचारी की सेवानिवृत्ति के पश्चात् आर.आर.सी. द्वारा वसूली – आरोप कि जब कर्मचारी स्टोर कीपर के रूप में पदस्थ था कुछ वस्तुएँ कम पायी गईं और कर्मचारी ने वस्तुओं की कमी स्वीकार की – आरोप साबित नही हुआ क्योंकि विभाग कोई दस्तावेज पेश करने में असफल रहा – विभागीय या न्यायिक कार्यवाही में वसूली का कोई न्याय–निर्णय नही – अभिनिर्धारित – विभागीय या न्यायिक कार्यवाही के बिना वसूली हेतु आर.आर.सी. का जारी किया जाना स्थिर रखे जाने योग्य नही – आर.आर.सी. अभिखंण्डित – याचिका मंजूर। (विष्णु वकील वि. म.प्र. राज्य) ...2609

संविधान, अनुच्छेद 226 – अनुकम्पा नियुक्ति – याची के पिता की मृत्यु 18.05.1996 को सेवा में रहते हुए हुई – माँ ने अवयस्क पुत्र की नियुक्ति के लिए आवेदन पेश किया – आवेदन वयस्कता प्राप्त करने पर नया आवेदन पेश के निदेश के साथ खारिज – नया आवेदन वयस्कता प्राप्त करने के पश्चात् 06.07.2005 को पेश – 18.06.2007 को इस आधार पर खारिज हुआ कि परिपत्र दिनांकित 22.01.2007 उपबंधित करता है कि यदि मृतक के परिवार में कोई पात्र वयस्क सदस्य नही है तो अनुकम्पा नियुक्ति केवल तभी दी जा सकती है जब वयस्कता की आयु 7 वर्षों के अन्दर प्राप्त की गई हो और यदि अवयस्क द्वारा वयस्कता की आयु 7 वर्ष के बाद प्राप्त की जाती है वहां पात्रता नहीं होगी – अभिनिर्धारित – मृत्यु के समय पर और अनुकम्पा नियुक्ति का आवेदन देते समय प्रचलित नीति लागू की जाना चाहिए न कि नीति जो बाद में अस्तित्व में आयी हो – अनुकम्पा नियुक्ति अस्वीकार करने का आदेश अभिखंडित – याचिका मंजूर। (भूपेन्द्र बैरागी वि. म.प्र. राज्य) ...2310

संविधान, अनुच्छेद 226 – अनुकम्पा नियुक्ति – याची के पिता की मृत्यु 18.12.1985 को सेवा में रहते हुए हुई – वयस्कता प्राप्त करने पर 01.09.2000 को याची ने अनुकम्पा नियुक्ति के लिए आवेदन पेश किया – नियुक्ति – पश्चात्वर्ती नीति तारीख 22.01.2007, जिसमें केवल अवयस्क के कर्मचारी की मृत्यु से 7 वर्ष के भीतर वयस्कता प्राप्त करने की दशा में अनुकम्पा नियुक्ति दी जा सकती है, के आधार पर नियुक्ति निरस्त – अभिनिर्धारित – अनुकम्पा नियुक्ति के लिए आवेदन के समय प्रचलित नीति लागू होगी न कि नीति जो बाद में अस्तित्व में आयी – अनुकम्पा नियुक्ति निरस्त करने का आदेश अभिखंडित – याचिका मंजूर। (राकेश जाजू (गुप्ता) वि. म.प्र. राज्य)...*81

Constitution, Article 226 - *Delay - In 1993, petitioner was informed that he was not entitled to get additional increment - Subsequent communication would not give fresh cause of action - Stale cause of action can not be entertained - Petition dismissed.* [Radheshyam Surolia v. National Textile Corporation (MP) Ltd.] ...2289

Constitution, Article 226 - *Locus standi - Service Law - Maintainability of writ petition filed by a person not aggrieved - Re-appointment - Quo Warranto - Held - Writ petition for issuance of writ of Quo-Warranto is maintainable even not filed by person aggrieved.* [Lalan Thakur v. State of M.P.] ...3116

Constitution, Article 226 - ***Money deposites by senior citizens in Bank*** *- Petitioners are senior citizen and had deposited savings of their entire life in Bank - On account of irregularities, RBI cancelled licence of the Bank and put under liquidation - Official liquidator provided amount to discharge liability of Bank - Part payment made to petitioners - Release of balance amount to petitioners withheld by liquidator till money advanced by Guarantee Corporation was return back - Held - Petitioners are not millionaires ever expecting to multiply money by making commercial or speculative investments - Official liquidator directed to release the deposited amount of petitioners at first instant - Petition allowed.* [Mandakini Raverkar (Smt.) v. State of M.P.] ...3147

Constitution, Article 226, ***Nagar Tatha Gram Nivesh Adhiniyam, M.P., 1973*** *-- Learned Single Judge while allowing the bunch of writ petitions, had specifically mentioned that the common order would be applicable only to the petitioners who had approached this Court and not others - Held - Judgment was not in rem - Petitioner who had abandoned a part of his claim and relinquished his rights in the disputed land - It would be deemed as if petitioner had not even filed the petition qua the disputed land - Such petitioner cannot get the benefit of that common order.* [Sadashiv Joshi v. State of M.P.] ...2254

Constitution, Article 226, ***Nagar Tatha Gram Nivesh Adhiniyam, M.P., 1973*** *-- Petitioner having abandoned a part of claim in the earlier writ petition and relinquished his right on part of disputed land - In subsequent writ petition, petitioner challenged whole scheme including disputed land which he had originally abandoned - Held - Petitioner is totally debarred and even estopped from raising that claim in subsequent writ petition - Not on the ground of res judicata but on the ground of public policy.* [Sadashiv Joshi v. State of M.P.] ...2254

Constitution, Article 226, ***Nagar Tatha Gram Nivesh Adhiniyam, M.P., 1973*** *-- Petitioner very cleverly kept silent in subsequent writ petition that he had, in earlier writ petition, abandoned a substantial part of claim and given up his rights qua the disputed land - Held - Material concealment and not*

संविधान, अनुच्छेद 226 – विलम्ब – 1993 में याची को सूचित किया गया कि वह अतिरिक्त वेतनवृद्धि पाने का हकदार नहीं था – पश्चात्वर्ती संसूचना नया वादकारण प्रदान नहीं करेगी – पुराना वादकारण ग्रहण नहीं किया जा सकता है – याचिका खारिज। (राधेश्याम सुरोलिया वि. नेशनल टेक्सटाइल कारपोरेशन (एम.पी.) लि.) ...2289

संविधान, अनुच्छेद 226 – सुने जाने का अधिकार – सेवा विधि – जो व्यथित न हो उस व्यक्ति द्वारा पेश रिट याचिका की पोषणीयता – पुनर्नियुक्ति – अधिकार पृच्छा – अभिनिर्धारित – अधिकार पृच्छा की रिट जारी करने के लिए रिट याचिका व्यथित व्यक्ति द्वारा पेश न किये जाने पर भी पोषणीय है। (लालन ठाकुर वि. म.प्र. राज्य) ...3116

संविधान, अनुच्छेद 226 – सीनियर सिटीजन द्वारा बैंक में जमा राशि – याची वरिष्ठ नागरिक हैं और उन्होंने अपने सम्पूर्ण जीवन की बचत बैंक में जमा की थी – अनियमितताओं के कारण भारतीय रिजर्व बैंक ने बैंक का लायसेंस रद्द किया और परिसमापन के अधीन रखा – शासकीय समापक ने बैंक के दायित्वों को पूरा करने के लिए राशि का प्रबंध किया – याचियों को आंशिक भुगतान किया गया – परिसमापक द्वारा याचियों को शेष राशि की निर्मुक्ति गारंटी कॉर्पोरेशन द्वारा दिया गया धन वापस प्राप्त होने तक रोक ली गई – अभिनिर्धारित – याची लखपति नही हैं और उन्होंने वाणिज्यिक या सट्टे वाला निवेश करके धन बढ़ाने की कभी भी प्रत्याशा नही की – शासकीय परिसमापक को प्रथमतः याचियों की जमा राशि निर्मुक्त करने के निदेश दिये गये – याचिका मंजूर। (मंदाकिनी रावेरकर (श्रीमति) वि. म.प्र. राज्य) ...3147

संविधान, अनुच्छेद 226, नगर तथा ग्राम निवेश अधिनियम, म.प्र., 1973 – विद्वान एकल न्यायाधीश ने रिट याचिकाओं के समूह को मंजूर करते समय विशिष्ट रूप से यह उल्लेख किया कि सामान्य आदेश केवल ऐसे याचियों को लागू होगा जिन्होंने इस न्यायालय को निवेदन किया और अन्य को नहीं – अभिनिर्धारित – निर्णय सर्वबंधी (इन रेम) नहीं था – याची जिसने उसके दावे के भाग को छोड़ दिया था और विवादित भूमि में अपने अधिकार त्याग दिये थे – यह माना जाएगा कि जैसे याची ने विवादित भूमि के संबंध में कोई याचिका ही पेश नहीं की थी – ऐसा याची सामान्य आदेश का कोई लाभ नहीं पा सकता है। (सदाशिव जोशी वि. म.प्र. राज्य) ...2254

संविधान, अनुच्छेद 226, नगर तथा ग्राम निवेश अधिनियम, म.प्र., 1973 – याची ने पूर्व रिट याचिका में दावे के एक भाग को छोड़ दिया और विवादित भूमि के भाग पर अपना अधिकार त्याग दिया – पश्चात्वर्ती रिट याचिका में याची ने विवादित भूमि, जो वह मूल रूप से छोड़ चुका था, को सम्मिलित करते हुए पूरी स्कीम को चुनौती दी – अभिनिर्धारित – याची उस दावे को पश्चात्वर्ती रिट याचिका में उठाने से पूर्णतः विवर्जित और बिबंधित भी है – पूर्व–न्याय के आधार पर नहीं बल्कि लोक नीति के आधार पर। (सदाशिव जोशी वि. म.प्र. राज्य) ...2254

संविधान, अनुच्छेद 226, नगर तथा ग्राम निवेश अधिनियम, म.प्र., 1973 – याची बड़ी चतुराई से पश्चात्वर्ती रिट याचिका में इस पर मौन रहा कि उसने पूर्व में पेश रिट याचिका में उसके दावे के सारवान् भाग को छोड़ दिया था और विवादित भूमि के संबंध में उसके अधिकार त्याग दिये थे – अभिनिर्धारित – सारवान् तथ्य को छुपाया और सभी सुसंगत तथ्य प्रकट नहीं किये

disclosing all relevant facts - Petitioner had tried to not only mislead the court but has also made an attempt to misuse and abuse the process of Court -Disentitled the petitioner from adjudication of his claim on merits. [Sadashiv Joshi v. State of M.P.] ...2254

Constitution, Article 226, National Security Act, 1980, Section 3(2) - *Order of preventive detention - Grounds - Offences do not relate to any activity prejudicial to public order - Ground relating to shooting at public place causing terror in public - Ground alleged inconsistent with F.I.R. - Representation against detention rejected after 17 days without explanation of delay - Subjective satisfaction requisites for passing detention order stands vitiated - Held - Detention order quashed - Petition allowed.* [Lalita Bai v. State of M.P.] ...2587

Constitution, Article 226, Panchayat Shiksha Karmis (Recruitment and Condition of Service) Rules, M.P. 1997 - *Scope - Petitioners selected are either sons, daughter, sisters, sister-in-law of the members of Selection Committee - After appreciating all these factors, the finding concurrently arrived at by the appellate authority (Collector) and revisional authority (Commissioner) - Order challenged in writ petition - Held - While exercising jurisdiction under Article 226 of the Constitution and while considering the question of interference into administrative or quasi judicial orders passed, if reasonable and prudent approach is adopted and if it is found that the approach of the authorities, administrative or quasi judicial in nature, is not vitiated by any statutory provisions or malafides, interference should not be made.* [Shyama Dwivedi (Smt.) v. State of M.P.] ...2885

Constitution, Article 226 - *Petitioner a blind person, appeared and got selected in preliminary and main examination conducted by M.P.P.S.C. - Was not permitted to participate in oral interview and denied benefit of reservation for disabled person - Held - Petitioner being selected in year 1998-99, therefore, direction to appoint can not be issued after 9 years.* [Nilesh Singhal v. State of M.P.] ...2264

Constitution, Article 226 - *Petitioner during course of employment acquired LL.B. and M.B.A. degrees - Claim for additional increments for acquiring additional professional qualifications - By one increment petitioner reached the maximum of sanctioned pay scale - Held - Denial of additional increment because petitioner reached to maximum of scale would not result in discrimination - Petition dismissed.* [Radheshyam Surolia v. National Textile Corporation (MP) Ltd.] ...2289

**Constitution, Article 226 - *Recovery from terminal benefits - Due to clerical error benefit of two increments was extended to petitioner's husband - Order for recovery from terminal benefits - Held - Benefits of increments was not extended in favour of petitioner's husband on account of any fraud*

– याची ने न केवल न्यायालय को गुमराह करने का प्रयास किया बल्कि न्यायालय की प्रक्रिया का दुरुपयोग करने का प्रयत्न भी किया – याची को उसके दावे का गुणदोषों पर निराकरण करने के अधिकार से वंचित करता है। (सदाशिव जोशी वि. म.प्र. राज्य) ...2254

संविधान, अनुच्छेद 226, राष्ट्रीय सुरक्षा अधिनियम, 1980, धारा 3(2) – निवारक निरोध का आदेश – आधार – अपराध लोक व्यवस्था के प्रतिकूल किसी क्रियाकलाप से सम्बन्ध नही रखते हैं – आधार लोक स्थल पर लोक में भय उत्पन्न करते हुए गोली चलाने से संबंधित – कथित आधार एफ.आई.आर. से असंगत है – निरोध के विरुद्ध अभ्यावेदन 17 दिनों बाद विलम्ब के स्पष्टीकरण के बिना खारिज किया गया – निरोध का आदेश पारित करने के लिए आवश्यक वैयक्तिक समाधान दूषित हुआ – अभिनिर्धारित – निरोध का आदेश अभिखण्डित – याचिका मंजूर। (ललिता बाई वि. म.प्र. राज्य) ...2587

संविधान, अनुच्छेद 226, पंचायत शिक्षा कर्मी (भर्ती और सेवा की शर्तें) नियम, म.प्र. 1997 – क्षेत्र – चयनित याची चयन समिति के सदस्यों के पुत्र, पुत्री, बहिनें, भाभी हैं – इन सभी कारकों का विवेचन करने के बाद अपील प्राधिकारी (कलेक्टर) और पुनरीक्षण प्राधिकारी (कमिश्नर) द्वारा समवर्ती रूप में निष्कर्ष निकाले गये – आदेश को रिट याचिका में चुनौती दी गई – अभिनिर्धारित – संविधान के अनुच्छेद 226 के अन्तर्गत अधिकारिता का प्रयोग करते समय और पारित प्रशासनिक या अर्ध–न्यायिक आदेशों में हस्तक्षेप के प्रश्न पर विचार करते समय, यदि युक्तियुक्त और बुद्धिमत्तापूर्ण दृष्टिकोण अपनाया जाता है और यदि यह पाया जाता है कि प्राधिकारियों के दृष्टिकोण की प्रकृति प्रशासनिक या अर्ध–न्यायिक है, किसी भी कानूनी उपबंध या असद्भावना द्वारा दूषित नही है, हस्तक्षेप नहीं किया जाना चाहिए। (श्यामा द्विवेदी (श्रीमति) वि. म.प्र. राज्य) ...2885

संविधान, अनुच्छेद 226 – नेत्रहीन याची म.प्र. लोक सेवा आयोग द्वारा संचालित प्रारम्भिक एवं मुख्य परीक्षा में उपस्थित हुआ और चयनित किया गया – मौखिक साक्षात्कार में शामिल होने की अनुमति नही दी गई और निःशक्त व्यक्ति के लिए आरक्षण के लाभ से इंकार किया गया – अभिनिर्धारित – याची वर्ष 1998–99 में चयनियत हुआ इसलिए नियुक्त करने के निदेश 9 वर्ष पश्चात् जारी नही किये जा सकते। (नीलेश सिंघल वि. म.प्र. राज्य) ...2264

संविधान, अनुच्छेद 226 – याची ने नियोजन के दौरान एलएल.बी. और एम.बी.ए. की उपाधियाँ प्राप्त कीं – अतिरिक्त व्यावसायिक योग्यता प्राप्त करने के कारण अतिरिक्त वेतनवृद्धि के लिए दावा – एक वेतनवृद्धि से याची अधिकतम स्वीकृत वेतनमान पर पहुँच गया – अभिनिर्धारित – याची के अधिकतम वेतनमान पर पहुँचने की वजह से अतिरिक्त वेतनवृद्धि से इनकारी के परिणामस्वरूप विभेद नहीं होगा – याचिका खारिज। (राधेश्याम सुरोलिया वि. नेशनल टेक्सटाइल कारपोरेशन (एम. पी.) लि.) ...2289

संविधान, अनुच्छेद 226 – सेवान्त लाभ से वसूली – लिपिकीय त्रुटि के कारण दो वेतन वृद्धियों का लाभ याची के पति को दिया गया – सेवान्त लाभ से वसूली का आदेश – अभिनिर्धारित – याची के पति को वेतन वृद्धियों का लाभ उसके द्वारा किसी कपट या दुर्व्यपदेशन के कारण नही

or misrepresentation on his part - Recovery could not be made - Order of recovery quashed - petition allowed. [Devkunwar (Smt.) v. State of M.P.] ...*76

Constitution, Article 226 - See - *Criminal Procedure Code, 1973, Section 340* [Bhavani Shankar Sharma v. Keshri Singh Chouhan] ...3082

Constitution, Article 226, *Service Law* - *Non Grant Aided Private Educational Institutions - Writ Petition - Maintainability - A writ petition under Article 226 of Constitution against a private educational institution not receiving grant-in-aid either from State Government or from Central Government - Petitioner claiming continuance in service beyond 58 years of age - No question of public law involved in as much as the grievance is of personal nature - Writ petition not maintainable.* [Yashwant Singh Sikarwar v. Teresian Carmel Educational Society] ...3157

Constitution, Article 226 - *Service Law* - *Termination of service - Natural Justice - Appointment of appellant as teacher with a condition, subjected to verification of antecedents - It was found that appellant was involved in seven criminal cases - Appointment cancelled by State Government - Order challenged - Held - A teacher having criminal antecedents cannot be permitted to continue in service - Nature of job of teacher is of immense significance not only in the context of a school but also in the context of national scenario - A teacher builds the character of students who in turn participate in playing the role of building of the nation - Order of Single Judge upheld - Writ Appeal dismissed.* [Narayan Singh Yadav v. State Government of M.P.] ...2783

Constitution, Article 226 - *Subsistence allowance can be claimed on the basis of deemed suspension - As a result of departmental proceedings applicant dismissed from service by order dated 29.02.1996 - Departmental appeal also dismissed - High Court in writ petition quashed the order of dismissal and applicant was directed to be reinstated in service - Order of High Court was assailed in writ appeal - Appellate court set-aside all the orders and remitted the matter back to Disciplinary Authority with certain directions - Fresh order of dismissal passed on 16.04.2007 - Applicant claimed subsistence allowance from the date of his first dismissal i.e. 29.02.1996 till the date of his second dismissal ..e. 16.04.2007 - Held - Finding and order of Disciplinary Authority was set-aside and was directed to re-decide issue after affording adequate opportunity to applicant - Position of applicant as it existed prior to his dismissal from service as charged officer under suspension was restored - Applicant should be deemed to be under suspension till the date of subsequent order of dismissal - Applicant entitled for subsistence allowance - Application allowed.* [Gurmit Singh v. The Zonal Manager, Punjab & Sindh Bank, Bhopal] ...3049

Constitution, Article 226 - *Transfer - Mala fides* - *Allegations of mala*

दिया गया – वसूली नही की जा सकती – वसूली का आदेश अभिखण्डित – याचिका मंजूर। (देवकुंवर (श्रीमति) वि. म.प्र. राज्य) ...*76

संविधान, अनुच्छेद 226 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 340, (भवानी शंकर शर्मा वि. केसरी सिंह चौहान) ...3082

संविधान, अनुच्छेद 226, सेवा विधि – गैर अनुदान प्राप्त निजी शैक्षणिक संस्थान – रिट याचिका – पोषणीयता – संविधान के अनुच्छेद 226 के अन्तर्गत रिट याचिका निजी शैक्षणिक संस्थान के विरुद्ध, जो न तो राज्य सरकार से और न केन्द्र सरकार से सहायता अनुदान प्राप्त करती थी – याची 58 वर्ष की उम्र के बाद सेवा में रखने का दावा करता है – लोक विधि का कोई प्रश्न अन्तर्ग्रस्त नही है यहाँ तक कि शिकायत वैयक्तिक प्र.ति की है – रिट याचिका पोषणीय नही। (यशवंत सिंह सिकरवार वि. तिरेसियन कारमेल एजूकेशनल सोसयटी) ...3157

संविधान, अनुच्छेद 226 – सेवा बिधि – सेवा समाप्ति – नैसर्गिक न्याय – अपीलार्थी की शिक्षक के रूप में नियुक्ति पूर्वचरित सत्यापन की शर्त के साथ की – यह पाया गया कि अपीलार्थी सात दाण्डिक मामलों में संलिप्त था – नियुक्ति राज्य सरकार द्वारा निरस्त की गई – आदेश को चुनौती – अभिनिर्धारित – एक शिक्षक जिसका आपराधिक पूर्वचरित हो उसे सेवा में बने रहने की अनुमति नही दी जा सकती – शिक्षक के कार्य की प्रकृति न केवल विद्यालय के संदर्भ में बल्कि राष्ट्रीय परिदृश्य के संदर्भ में भी असीम महत्व की होती है – एक शिक्षक विद्यार्थियों के चरित्र का निर्माण करता है जो देश के निर्माण में महत्वपूर्ण भूमिका निभाते हैं – एकल न्यायाधीश के आदेश की पुष्टि की गई – रिट अपील खारिज। (नारायण सिंह यादव वि. राज्य सरकार म.प्र.) ...2783

संविधान, अनुच्छेद 226 – जीवन–निर्वाह भत्ते का दावा माने गये निलम्बन के आधार पर किया जा सकता है – विभागीय कार्यवाही के परिणामस्वरूप आवेदक को आदेश तारीख 29.02.1996 द्वारा सेवा से पदच्युत किया गया – विभागीय अपील भी खारिज की गई – उच्च न्यायालय ने रिट याचिका में पदच्युति का आदेश अभिखण्डित किया और आवेदक को सेवा में पुनर्नियुक्त किये जाने के निदेश दिये – उच्च न्यायालय के आदेश को रिट अपील में चुनौती दी गई – अपीलीय न्यायालय ने सभी आदेश अपास्त किये और मामला कुछ निदेशों के साथ अनुशासनिक प्राधिकारी को वापस भेज दिया – पदच्युति का नवीन आदेश 16.04.2007 को पारित किया गया – आवेदक ने उसकी प्रथम पदच्युति की तारीख अर्थात् 29.02.1996 से द्वितीय पदच्युति की तारीख अर्थात् 16.04.2007 तक जीवन–निर्वाह भत्ते का दावा किया – अभिनिर्धारित – अनुशासनिक प्राधिकारी का निष्कर्ष और आदेश अपास्त किया गया और आवेदक को सुनवाई का पर्याप्त अवसर देने के बाद विवाद पुनः विनिश्चित करने का निदेश दिया – आवेदक की स्थिति जैसी उसकी सेवा से पदच्युति के पूर्व निलम्बन के अन्तर्गत आरोपित अधिकारी के रूप में थी पुनःस्थापित की गई – आवेदक को सेवा समाप्ति के पश्चात्वर्ती आदेश की तारीख तक निलम्बन के अधीन माना जाना चाहिए – आवेदक जीवन–निर्वाह भत्ते का हकदार – आवेदन मंजूर। (गुरमीत सिंह वि. द जोनल मेनेजर, पंजाब एंड सिंध बैंक, भोपाल) ...3049

संविधान, अनुच्छेद 226 – स्थानांतरण – असद्भाव – असद्भाव का अभिकथन ऐसी

fide have to be established and proved to such a extent that the Court can record positive finding. [Pareekshit Singh (Dr.) v. State of M.P.] ...2849

Constitution, Article 226 - ***Transfer - Malafides*** - *Employee is required to place on record strong and clinching material in support of his plea of malafides - Transfer order of petitioner issued by Director - No malafides alleged against him - Petitioner failed to place on record any cogent material in support of his plea of malafides - Petition dismissed.* [Shishir Raizada v. Union of India] ...2234

Constitution, Article 226 - ***Transfer*** - *Number of complaints and enquiries pending against petitioner - Transfer of employee to facilitate enquiry or disciplinary action is a proper exercise of power.* [Pareekshit Singh (Dr.) v. State of M.P.] ...2849

Constitution, Article 226 - ***Transfer*** - *Scope of Judicial Review - Transfer order can be interfered only if mala fides are established or if the transfer is found to be contrary to statutory provisions or provisions having force of law.* [Pareekshit Singh (Dr.) v. State of M.P.] ...2849

Constitution, Article 226, Urban Land (Ceiling and Regulation) Act, 1976, Section 10(3), Rule 5(2)(c) - ***Alternative Remedy*** - *Learned Single Judge dismissed the writ petition for want of availability of alternative remedy - Held - The Division Bench reversing the finding of the learned Single Judge held that when the notices were not served, the proceedings were not conducted manifestly in a legal manner and the principles of Natural Justice were not followed - It cannot be held that the proceedings were lawful or writ jurisdiction of High Court is barred - Since no evidence is required to assess the question of legality of the proceeaings, the question can be examined by the writ court - Writ Appeal allowed.* [Sohan Singh v. State of M.P.] ...2184

Constitution, Article 226 - ***Writ of Mandamus*** - *No writ of mandamus could be issued for enforcement of pure contractual right.* [Paresh Spinners Ltd. v. State Bank of India] ...2571

Constitution, Article 226/227 - ***Service Law*** - *Appellants were terminated on the ground that selection committee not constituted properly - Order challenged in W.P. - W.P. dismissed - Writ Appeal filed - Held -The selection committee and the members who were within the knowledge about the defect in the selection committee have slept over the matter for about three and half years after appointments were made - Thus, the members have acquiesced themselves and have no right to challenge the appointment on the ground of selection - Appellants/petitioners are the candidates from outside the State of Madhya Pradesh have got their appointments and altered their position by leaving other jobs available to them - Appeal allowed.* [Sanjeev Yadav v. Lakshmibai National Institute of Physical Education] ...2535

सीमा तक स्थापित और सिद्ध किया जाना चाहिए कि न्यायालय सकारात्मक निष्कर्ष अभिलिखित कर सके। (परीक्षित सिंह (डॉ.) वि. म.प्र. राज्य) ...2849

संविधान, अनुच्छेद 226 – स्थानांतरण – असद्भाव – कर्मचारी को असद्भाव के अपने अभिवचन के समर्थन में ठोस और स्थिर सामग्री अभिलेख पर रखना अपेक्षित है – याची का स्थानांतरण आदेश संचालक द्वारा जारी – उसके विरुद्ध तथाकथित कोई असद्भाव नहीं – याची असद्भाव के अपने अभिवचन के समर्थन में कोई तर्कपूर्ण सामग्री अभिलेख पर रखने में असफल रहा – याचिका खारिज। (शिशिर रायजादा वि. यूनियन ऑफ इंडिया) ...2234

संविधान, अनुच्छेद 226 – स्थानांतरण – याची के विरुद्ध कई शिकायतें और जाँचें लम्बित – कर्मचारी का स्थानांतरण जाँच या अनुशासनात्मक कार्यवाही को सुकर बनाने के लिए शक्तियों का उचित प्रयोग है। (परीक्षित सिंह (डॉ.) वि. म.प्र. राज्य) ...2849

संविधान, अनुच्छेद 226 – स्थानांतरण – न्यायिक पुनर्विलोकन का क्षेत्र – स्थानांतरण आदेश में हस्तक्षेप सिर्फ तभी, यदि असद्भाव स्थापित होता है या स्थानांतरण वैधानिक उपबंधों या ऐसे उपबंधों जो विधि का प्रभाव रखते हैं, के प्रतिकूल है। (परीक्षित सिंह (डॉ.) वि. म.प्र. राज्य) ...2849

संविधान, अनुच्छेद 226, नगर भूमि (अधिकतम सीमा और विनियमन) अधिनियम, 1976, धारा 10(3), नियम 5(2)(सी) – वैकल्पिक उपचार – विद्वान एकल न्यायाधीश ने वैकल्पिक उपचार की उपलब्धता के कारण रिट याचिका खारिज की – अभिनिर्धारित – खण्ड न्यायपीठ ने विद्वान एकल न्यायाधीश के निष्कर्षों को उलटते हुए अभिनिर्धारित किया कि जब सूचनापत्रों की तामील नही की गई, कार्यवाहियाँ प्रत्यक्ष रूप से वैध तरीके से संचालित नहीं की गई और प्राकृतिक न्याय के सिद्धांतों का पालन नहीं किया गया – यह अभिनिर्धारित नही किया जा सकता कि कार्यवाहियाँ विधिपूर्ण थीं या उच्च न्यायालय की रिट अधिकारिता वर्जित है – चूंकि कार्यवाहियों की वैधता के प्रश्न का निर्धारण करने के लिए कोई साक्ष्य अपेक्षित नही है, प्रश्न का रिट न्यायालय द्वारा परीक्षण किया जा सकता है – रिट अपील मंजूर। (सोहन सिंह वि. म.प्र. राज्य) ...2184

संविधान, अनुच्छेद 226 – परमादेश की रिट – पूर्ण संविदात्मक अधिकार के प्रवर्तन के लिए परमादेश की रिट जारी नही की जा सकती। (परेश स्पिनर्स लि. वि. स्टेट बैंक ऑफ इंडिया) ...2571

संविधान, अनुच्छेद 226/227 – सेवा विधि – अपीलार्थियों को सेवा से इस आधार पर पृथक किया गया कि चयन समिति उचित रूप से गठित नही की गई थी – आदेश को रिट याचिका में चुनौती दी गई – रिट याचिका खारिज – रिट-अपील पेश – अभिनिर्धारित – चयन समिति और सदस्य, जिन्हें चयन समिति में त्रुटि के बारे में जानकारी थी, नियुक्तियाँ की जाने के पश्चात् लगभग साढ़े तीन वर्ष तक मामले में निष्क्रिय रहे – इस प्रकार सदस्यों ने स्वयं मौन सम्मति दे दी है और उन्हें चयन के आधार पर की गई नियुक्ति को चुनौती देने का कोई अधिकार नही है – अपीलार्थी/याचिकाकर्ता, मध्य प्रदेश राज्य के बाहर के अभ्यर्थी हैं और उन्होंने नियुक्तियाँ प्राप्त करने के बाद उपलब्ध अन्य कार्यों को छोड़ते हुए अपनी स्थिति परिवर्तित कर ली है – अपील खारिज। (संजीव यादव वि. लक्ष्मीबाई नेशनल इंस्टीट्यूट ऑफ फिजीकल एजूकेशन) ...2535

Constitution, Article 226 & 300A - ***Right to property*** - *Whether the ownership land of the petitioner can be utilized by the Municipal Corporation for widening road without following the due procedure in accordance with law - Held - Right to own and retain property being not only a constitutional right but also human right - Petitioner cannot be deprived of said right except by following due process of law - The land has to be acquired by paying compensation at market rate - Petition allowed.* [Jaswant Bhai Doshi v. Indore Municipal Corporation] ...3137

Constitution, Article 227 - **See** - *Civil Procedure Code 1908, Section 34,* [Chitrarekha (Smt.) v. Virendra Kumar Sharma] ... 2611

Constitution, Article 227 - ***Supervisory Jurisdiction - Scope*** - *High Court in exercise of its supervisory jurisdiction can only look into the dispute that was raised before the Industrial Court and examined as to whether the Industrial Court has committed any patent error which is manifest and apparent from the face of record which has resulted in gross injustice or failure of justice.* [Katni Pottery Karamchari Sangh v. M/s. Associated Cement Companies Ltd.] ...2870

Constitution, Article 311 - ***Compulsory Retirement*** - *Scope of interference - Petitioner remained absent without leave unauthorisedly and thereafter did not join at his transferred post in spite of receiving instructions - Held - The conduct of petitioner is not becoming that of an employee and that it has resulted in loss of faith, trust and loss of confidence in him - Punishment of compulsory retirement is not harsh or grossly disproportionate - Order does not suffer from any kind of perversity or wednesbury unreasonableness - Petition dismissed.* [Hari Krishna Verma v. The District & Sessions Judge] ...2231

Constitution, Article 311 - ***Departmental Enquiry*** - *Acquittal in criminal case - Appellant was Asstt. Manager in State Bank of India - He was custodian of extension counter - On surprise check Rs. 1 lacs were found short - He was prosecuted u/ss 409 & 477A of I.P.C. - Departmental Enquiry on the allegation that he had failed to protect the Bank's interest as a result of which Bank has been saddled with pecuniary loss of Rs. 1 lacs initiated - Charges were found proved and appellant was dismissed from service - Appellant thereafter acquitted in criminal proceedings - Held - Scope of criminal proceedings and scope of departmental proceedings are quite distinct, exclusive and independent of each other - Both the proceedings were on a totally different sets of facts and charges - Charges have a different character, tenor and contour - No scintilla of doubt that charge sheet is absolutely different - Appeal dismissed.* [R.K. Geete v. Deputy Managing Director and Corporate Development Officer] ...2771

Constitution, Article 311 - ***Departmental Enquiry*** - *Principles of Natural*

संविधान, अनुच्छेद 226 व 300ए – सम्पत्ति का अधिकार – क्या याची के स्वामित्व की भूमि का उपयोग नगर निगम द्वारा सड़क चौड़ी करने के लिए विधि की सम्यक् प्रक्रिया का पालन किये बिना किया जा सकता है – अभिनिर्धारित – सम्पत्ति के स्वामित्व और प्रतिधारित करने का अधिकार न केवल संवैधानिक अधिकार है बल्कि मानव अधिकार भी है – विधि की सम्यक् प्रक्रिया के पालन के बिना याची को उक्त अधिकार से वंचित नही किया जा सकता – बाजार दर से प्रतिकर अदा करके भूमि अधिग्रहीत की जानी चाहिए – याचिका मंजूर। (जसवंत भाई दोसी वि. इंदौर म्यूनिसिपल कारपोरेशन) ...3137

संविधान, अनुच्छेद 227 – देखें – सिविल प्रक्रिया संहिता, 1908, धारा 34 (चित्ररेखा (श्रीमति) वि. वीरेन्द्र कुमार शर्मा) ...2611

संविधान, अनुच्छेद 227 – पर्यवेक्षण अधिकारिता – क्षेत्र – उच्च न्यायालय अपनी पर्यवेक्षण अधिकारिता के प्रयोग में केवल विवाद की जाँच पड़ताल कर सकता है जो औद्योगिक न्यायालय के समक्ष उठाया गया और यह परीक्षा कर सकता है कि क्या औद्योगिक न्यायालय ने कोई प्रत्यक्ष त्रुटि की जो अभिलेख से प्रकट होती है जिसके परिणामस्वरूप घोर अन्याय हुआ या न्याय के विफलता हुई। (कटनी पॉटरी कर्मचारी संघ वि. में. एसोसिएटेड सीमेंट कं. लि.) ...2870

संविधान, अनुच्छेद 311 – अनिवार्य सेवानिवृत्ति – हस्तक्षेप का विषयक्षेत्र – याची बिना अवकाश के अनधिकृत रूप से अनुपस्थित रहा और उसके पश्चात् अनुदेश प्राप्त होने के बावजूद अपने स्थानांतरित पद पर कार्यभार ग्रहण नहीं किया – अभिनिर्धारित – याची का आचरण एक कर्मचारी की तरह नही है और इसके परिणामस्वरूप उसने निष्ठा, विश्वसनीयता और विश्वास खो दिया – अनिवार्य सेवानिवृत्ति कठोर या अत्यधिक अनुपातहीन नही है – आदेश किसी प्रकार की विपर्यस्तता या वेडनेसबरी अयुक्तियुक्तता से ग्रसित नही है – याचिका खारिज। (हरी कृष्ण वर्मा वि. द डिस्ट्रिक्ट एन्ड सेंशनस् जज) ...2231

संविधान, अनुच्छेद 311 – विभागीय जाँच – दाण्डिक मामले में दोषमुक्ति – अपीलार्थी भारतीय स्टेट बैंक में सहायक प्रबंधक था – वह विस्तार पटल का संरक्षक था – आकस्मिक जाँच पर 1 लाख रुपये कम पाये गये – उसे भा.द.सं. की धारा 409 व 477ए के अन्तर्गत अभियोजित किया गया – विभागीय जाँच इन आरोपों पर प्रारम्भ की गई कि वह बैंक के हितों की रक्षा करने में असफल हो गया था जिसके परिणामस्वरूप बैंक पर 1 लाख रुपये का आर्थिक भार डाला गया – आरोप साबित पाये गये और अपीलार्थी को सेवा से पदच्युत किया गया – अपीलार्थी उसके बाद दाण्डिक कार्यवाहियों में दोषमुक्त हो गया – अभिनिर्धारित – दाण्डिक कार्यवाहियों का क्षेत्र और विभागीय कार्यवाहियों का क्षेत्र एक–दूसरे से बिल्कुल भिन्न, अनन्य और स्वतंत्र है – दोनों कार्यवाहियाँ तथ्यों और आरोपों के पूर्णतः भिन्न समूहों पर थीं – आरोपों की भिन्न प्रकृति, तात्पर्य और रूप रेखा होती है – जरा भी संदेह नही कि आरोप पत्र पूर्ण रूप से भिन्न था – अपील खारिज। (आर. कें. गीते वि. डिप्टी मेनेजिंग डायरेक्टर एंड कारपोरेट डेव्हेलपमेंट आफीसर) ...2771

संविधान, अनुच्छेद 311 – विभागीय जाँच – नैसर्गिक न्याय के सिद्धांत – स्वयं

Justice - Appellant himself chosen not to participate in disciplinary proceeding - It does not lie in his mouth that principles of Natural Justice have been given indecent burial. [R.K. Geete v. Deputy Managing Director and Corporate Development Officer] ...2771

Constitution, Article 311(1), Lok Swasthya Evam Parivar Kalyan Chikitsa Samvida Sewa (Niyukti Tatha Sewa Ki Sharten) Niyam, 2002 - *Service Law - Petitioner appointed on the post of Medical Officer on contract basis - Termination without notice or enquiry by Chief Medical & Health Officer - Held - Under provisions of Niyam, appointing authority for Medical Officer is Commissioner, Health Services - Termination by CMO, an officer much below the rank of appointing authority, violative of Article 311(1) - Order of termination quashed and petitioner directed to be reinstated with consequential benefits - Petition allowed.* [Arti Choudhari (Dr.) v. State of M.P.] ...3110

Constitution, Articles 327 & 329 - See - *Delimitation Act, 2002, Sections 9 & 10(1)* [Association of the Resident of Mhow v. Delimitation Commission of India] ...2809

Contempt of Courts Act (70 of 1971), Section 19 - *Appeal - Court passed certain directions in exercise of its contempt jurisdiction - Held - Not only punishment awarded to alleged contemnors can be challenged but even correctness, validity and propriety of directions can also be challenged.* [Sulochana Mallaiya (Smt.) v. S.N. Shrivastava] ...2205

Cooperative Societies Act, M.P, 1960 (17 of 1961), Section 55 & 64, Staff Service Rules, 61 & 62, State Cooperative Tribunal Regulations, 2000, Regulation 31, Civil Procedure Code, 1908, Order 6 Rule 17 & Order 41 Rule 33 - *Termination - Amendment of Written Statement - Petitioners employees of Cooperative Bank registered under the Act, 1960, terminated from service - Joint Registrar setting aside the order of termination on the ground of non-observance of principles of natural justice - Both petitioners and respondents filed appeal before the Cooperative Tribunal and the appeal by respondents withdrawn - Respondent carrying out extensive amendment in the written statement at the stage of appeal before the Cooperative Tribunal - Cooperative Tribunal allowed the amendment, hence the writ petition by the petitioners for setting-aside the order allowing the amendment - Held - The object of allowing an application for amendment is to minimize the litigation and as the Joint Registrar had given liberty to the respondents to pass appropriate orders in accordance with the regulations, no prejudice would be caused to the petitioners if the amendment is allowed as the petitioners again would have challenged their termination which may ultimately result into the fresh litigation - Petition dismissed.* [Sushil Kumar Kanungo v. M.P. Rajya Sahkari Bank Maryadit] ...2238

अपीलार्थी ने अनुशासनिक कार्यवाही में भाग लेना पसंद नही किया – वह यह नही कह सकता कि नैसर्गिक न्याय के सिद्धांतों को अशिष्ट रूप से दफन कर दिया गया। (आर. के. गीते वि. डिप्टी मेनेजिंग डायरेक्टर एंड कारपोरेट डेव्हेलपमेंट आफीसर) ...2771

संविधान, अनुच्छेद 311(1), लोक स्वास्थ्य एवं परिवार कल्याण चिकित्सा संविदा सेवा (नियुक्ति तथा सेवा की शर्तें) नियम, 2002 – सेवा विधि – याची को संविदा के आधार पर चिकित्सा अधिकारी के पद पर नियुक्त किया गया – मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी द्वारा सूचनापत्र या जाँच के बिना सेवा समाप्ति – अभिनिर्धारित – नियम के उपबंधों के अन्तर्गत चिकित्सा अधिकारी का नियुक्ति प्राधिकारी कमिश्नर, स्वास्थ्य सेवाएँ है – नियुक्ति प्राधिकारी की पंक्ति से बहुत नीचे के अधिकारी (सीएमओ) द्वारा सेवा समाप्ति अनुच्छेद 311(1) का उल्लंघन है – सेवा समाप्ति का आदेश अभिखण्डित और याची को पारिणामिक लाभों सहित सेवा में पुनर्नियुक्त करने के निदेश दिये गये – याचिका मंजूर। (आरती चौधरी (डॉ.) वि. म.प्र. राज्य) ...3110

संविधान, अनुच्छेद 327, 329 –देखें – परिसीमन अधिनियम, 2002, धारा 9 व 10(1), (एसोसिएशन ऑफ द रेसीडेन्ट ऑफ महू वि. डीलिमिटेशन कमीशन ऑफ इंडिया) ...2809

न्यायालय अवमान अधिनियम (1971 का 70), धारा 19 – अपील – न्यायालय ने अपनी अवमान अधिकारिता के प्रयोग में कतिपय निदेश पारित किये – अभिनिर्धारित – न केवल कथित अवमानकर्ताओं को दिये गये दण्ड को चुनौती दी जा सकती है बल्कि निदेशों की शुद्धता, विधिमान्यता और औचित्य को भी चुनौती दी जा सकती है। (सुलोचना मलैया वि. एस.एन. श्रीवास्तव) ...2205

सहकारी सोसायटी अधिनियम, म.प्र., 1960 (1961 का 17), धारा 55 व 64, कर्मचारी सेवा नियम, 61 व 62, राज्य सहकारी अधिकरण विनियम, 2000, विनियम 31, सिविल प्रक्रिया संहिता, 1908, आदेश 6 नियम 17 व आदेश 41 नियम 33 – सेवा समाप्ति – वादोत्तर में संशोधन – अधिनियम, 1960 के अधीन पंजीकृत बैंक के कर्मचारी याची की सेवा समाप्ति – संयुक्त रजिस्ट्रार ने नैसर्गिक न्याय के अपालन में सेवा समाप्ति का आदेश अपास्त किया – याची व प्रत्यर्थी दोनों ने सहकारी अधिकरण में अपील पेश की तथा प्रत्यर्थी ने अपील वापस ली – सहकारी अधिकरण के समक्ष प्रत्यर्थी द्वारा अपील में व्यापक संशोधन प्रस्तावित किये – अधिकरण ने संशोधन मंजूर किया, तब याची द्वारा संशोधन स्वीकार करने वाले आदेश को अपास्त करने याचिका पेश की – अभिनिर्धारित – संशोधन आवेदन स्वीकार करने का आदेश मुकदमेबाजी कम करना है एवं संयुक्त रजिस्ट्रार द्वारा प्रत्यर्थियों को विनियम के अनुरूप उचित आदेश पारित करने की छूट दी गई थी, याची को संशोधन स्वीकार करने से कोई प्रतिकूल प्रभाव नहीं होगा क्योंकि याची पुनः अपने सेवा समाप्ति आदेश को चुनौती दे सकते थे जो अन्ततः नये मुकदमे में परिणित होगा – याचिका खारिज। (सुशील कुमार कानूनगो वि. एम.पी. राज्य सहकारी बैंक मर्यादित) ...2238

Court Fees Act (7 of 1870) [As amended by M.P. Amendment Act of 2008 w.e.f. 02.04.2008], Schedule I, Article 1-A - ***Interpretation*** - *Court fees payable on plaint, counterclaim etc. when amount or value exceeds Rs.10 lacs - Trial courts have interpreted the clause to mean that the plaintiffs/ suitors were required to pay not only Rs.95,000 on such suit but a further amount to a maximum of Rs.1,50,000 over and above Rs.95,000 - Held - The subject matter in dispute exceeds Rs.10 lacs, the court fees payable thereupon by the plaintiffs/suitors would be Rs.95,000 + 3% on the amount or value in excess of Rs.10 lacs, but the total court fees payable by the plaintiffs/suitors would be subject to a maximum of Rs.1,50,000 - The maximum court fees required to be paid on all such suits would be Rs.1,50,000 only and no more.* [Mohan Lal v. Kaji Vakiluddin] ...3152

Court Fees Act (7 of 1870), Schedule I, Section 7(iv)(a) - *Suit filed by plaintiff for declaring the order dated 10.08.2006 as illegal by which security amount of Rs.44,75,000/- has been forfeited - Trial court directed to pay ad valorem court fee on consequential relief - Held - Security amount is in possession of defendants and has to be prayed for by plaintiff for its refund - Suit for declaration will not be enough until amount is refunded to plaintiff - Plaintiff has to pay ad valorem court fee as prescribed in Schedule I - Petition dismissed.* [Bansal Highway (M/s.) v. General Manager, Gramin Sadak Vikas Pradhikaran Pariyojna Kriyanvayan] ...2912

Criminal Practice - *Burden on defence is not as onerous as on the prosecution to prove its case - Merely giving suggestion to witnesses and examining the defence witnesses - Version of defence would not be accepted unless it is substantiated & corroborated by material particulars.* [Arshad @ Arsad v. State of M.P.] ...3278

Criminal Procedure Code, 1973 (2 of 1974), Sections 41(2), 102, 451, 457, Income Tax Act, 1961, Sections 132(A), 293 - ***Seizure*** - *Rs.14,50,000/-seized on the suspicion of theft but no crime registered - Warrant of authorization issued u/s 132(A) of the Act - Application u/ss 451 & 457 of the Code rejected by JFMC, but allowed by ASJ in revision - Order challenged before the High Court - Held - After issuance of warrant of authorisation by the Income Tax Department, in absence of any crime having been registered - The magistrate or the police has no jurisdiction to deal with the money and the money has to handed over to the Income Tax Department for its disposal in accordance with Law - M.Cr.C. Allowed.* [Director of Income Tax (Investigation) v. State of M.P.] ...2483

Criminal Procedure Code, 1973 (2 of 1974), Sections 125(1) & 125(3)- ***Explanation*** - ***Maintenance*** - *Appellant married to respondent in the year 1978-79 - Gauna ceremony performed in the year 1982 - Appellant did not join her matrimonial house - Respondent contracted second marriage - Held*

न्यायालय फीस अधिनियम (1870 का 7) [म.प्र. संशोधन अधिनियम, 2008 द्वारा यथासंशोधित 02.04.2008 से यथाप्रभावी], अनुसूची I अनुच्छेद 1–ए – निर्वचन – वादपत्र, प्रतिदावा आदि पर देय न्यायालय फीस जब रकम या मूल्य 10 लाख रुपये से अधिक हो – विचारण न्यायालय ने खण्ड का यह अर्थ निकालते हुए निर्वचन किया कि वादियों/वादकर्ताओं को ऐसे वाद पर न केवल 95,000 रुपये बल्कि 95,000 रुपये के ऊपर अधिकतम 1,50,000 रुपये अतिरिक्त रकम अदा करना अपेक्षित था – अभिनिर्धारित – विवाद की विषयवस्तु 10 लाख रुपये से अधिक होती है, तो उस पर वादियों/वादकर्ताओं द्वारा देय न्यायालय फीस 95,000 रुपये + 10 लाख से अधिक रकम या मूल्य पर 3% होगी, किन्तु वादियों/वादकर्ताओं द्वारा देय कुल न्यायालय फीस अधिकतम 1,50,000 रुपये के अध्यधीन होगी – ऐसे सभी वादों पर देय अपेक्षित अधिकतम न्यायालय फीस केवल 1,50,000 रुपये होगी इससे अधिक नही। (मोहन लाल वि. काजी वकीलउद्दीन) 3152

न्यायालय फीस अधिनियम (1870 का 7), अनुसूची 1, धारा 7**(iv)**(ए) – वादी द्वारा आदेश तारीख 10.08.2006 को अवैध घोषित करने के लिए वाद पेश किया जिसके द्वारा 44,75,000/– रुपये की प्रतिभूति राशि समपहृत की गई – विचारण न्यायालय ने पारिणामिक अनुतोष पर एडवलरम न्यायालय फीस अदा करने का निदेश दिया – अभिनिर्धारित – प्रतिभूति राशि प्रतिवादियों के कब्जे में है और उसकी वापसी के लिए वादी द्वारा प्रार्थना की जानी है – घोषणा का वाद पर्याप्त नही होगा जब तक राशि वादी को वापस नही की जाती – वादी को अनुसूची 1 में विहित न्यायालय फीस अदा करना चाहिए – याचिका खारिज। (बंशल हाईवे (मे.) वि. जनरल मेनेजर ग्रामीण सड़क विकास प्राधिकरण परियोजना क्रियान्वयन) ...2912

दाण्डिक पद्धति – प्रतिरक्षा पर भार उतना अधिक नही है जितना अभियोजन पर अपने मामले को साबित करने का होता है – केवल साक्षियों को सुझाव देना और प्रतिरक्षा साक्षियों का परीक्षण कराना – प्रतिरक्षा पक्ष की कथा स्वीकार नही की जायेगी जब तक कि वह तात्विक विशिष्टियों के द्वारा प्रमाणित और पुष्ट न हो जाये। (अरशद उर्फ अरसद वि. म.प्र. राज्य) ...3278

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 41(2), 102, 451, 457, आयकर अधिनियम, 1961, धाराएँ 132(ए), 293 – अभिग्रहण – 14,50,000/– रुपये चोरी के संदेह में अभिग्रहीत किन्तु कोई अपराध पंजीबद्ध नही – अधिनियम की धारा 132(ए) के अधीन प्राधिकार का वारंट जारी – संहिता की धारा 451 व 457 के अधीन आवेदन प्रथम श्रेणी न्यायिक मजिस्ट्रेट द्वारा खारिज, किन्तु अपर सेशन न्यायाधीश द्वारा पुनरीक्षण में मंजूर – आदेश को उच्च न्यायालय के समक्ष चुनौती – अभिनिर्धारित – आयकर विभाग द्वारा प्राधिकार का वारंट जारी करने के बाद, किसी अपराध के पंजीबद्ध होने के अभाव में मजिस्ट्रेट या पुलिस रुपयों के बारे में कार्यवाही करने की कोई अधिकारिता नहीं रखते हैं और रुपया विधि अनुसार उसका निपटारा करने के लिए आयकर विभाग को सौंपना पड़ेगा – एम.सीआर.सी. मंजूर। (डायरेक्टर ऑफ इनकम टेक्स (इनवेस्टीगेशन) वि. म.प्र. राज्य) ...2483

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 125(1) व 125(3) स्पष्टीकरण – भरण–पोषण – अपीलार्थी का विवाह प्रत्यर्थी के साथ वर्ष 1978–79 में हुआ – गौने की रस्म वर्ष 1982 में की गयी – अपीलार्थी अपने दाम्पत्य निवास में नही गयी – प्रत्यर्थी ने द्वितीय विवाह कर लिया – अभिनिर्धारित – चूंकि प्रत्यर्थी द्वितीय विवाह कर चुका है, संहिता की धारा 125 की उपधारा

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- As respondent has contracted second marriage in terms of explanation appended to Sub-section (3) of Section 125 of Code, appellant is entitled to claim maintenance from respondent although appellant had refused to live with respondent - Appeal allowed. [Ahilya Bai v. Meharwan Singh] SC...3066

Criminal Procedure Code, 1973 (2 of 1974), Section 126(2) - See - *Muslim Woman (Protection of Rights on Divorce) Rules, 1986, Rule 4* [Mohiuddin v. Smt. Azra Bano] ...*88

Criminal Procedure Code, 1973 (2 of 1974), Sections 133, 137, 138, 482 - *Public Nuisance* - *Quashing of proceedings - Proceeding u/s 133 of Code initiated against the applicant for encroaching the public way - Applicant filed a civil suit and the civil court passed an order of injunction - Despite the order of injunction in favour of the applicant, the S.D.M. passed a conditional order of removal of encroachment - Proceeding challenged - Held - Magistrate has to first make an inquiry u/s 137(1) of Code - In such inquiry, if he finds there is reliable evidence in support of denial of the existence of a public way on the disputed land, he shall stay the proceedings until the matter of existence of such right is decided by civil court - If he finds there is no evidence, he shall proceed in accordance with Section 138 of Code - Petition disposed of.* [Mohammad Ausaph v. Mohammad Shaid]...*87

Criminal Procedure Code, 1973 (2 of 1974), Section 146 - *Attachment - Dispute regarding possession - Applicant was recorded Bhumiswami, whereas, non-applicant No.1 was having a decree of declaration of title on the basis of adverse possession - S.D.M. had passed an order of attachment of property and a receiver has been appointed to lookafter the property - Held - Section 146 attracted - Order of attachment can not be said to be illegal - However, the magistrate erred in not directing parties at the time of attachment to approach competent civil court for establishment of their entitlement to possession - Petition disposed of with such direction.* [Basant Kumar v. Smt. Kavita Bai] ...2728

Criminal Procedure Code, 1973 (2 of 1974), Section 154 - *F.I.R.* - *Contradictory statement of complainant and constable with regard to lodging of F.I.R. and time of recording thereof - It appears that there was concoction of time of recording of F.I.R. - F.I.R. not reliable.* [Nathu v. State of M.P.]...2682

Criminal Procedure Code, 1973 (2 of 1974), Section 154 - *F.I.R.* - *F.I.R. is not substantial piece of evidence - It can be used only for corroboration and proving the contradiction, omission and improvements in the statement of prosecution witnesses - Only on the basis of F.I.R. conviction cannot be upheld.* [Ganesh @ Ganesha @ Ganesh Prasad v. State of M.P.] ...3026

Criminal Procedure Code, 1973 (2 of 1974), Section 154, Penal Code, 1860, Section 376 - *F.I.R.* - *F.I.R. by itself is not a substantive piece of evidence - In absence of evidence of the prosecutrix, the averments made in*

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(3) से अनुलग्न स्पष्टीकरण के निबंधनों के अनुसार अपीलार्थी प्रत्यर्थी से भरण–पोषण का दावा करने की हकदार है यद्यपि अपीलार्थी ने प्रत्यर्थी के साथ रहने से इंकार कर दिया था – अपील मंजूर। (अहिल्याबाई वि. मेहरवान सिंह) SC---3066

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 126(2) – देखें – मुस्लिम स्त्री (विवाह विच्छेद पर अधिकार संरक्षण) नियम, 1986; नियम 4 (मोहउद्दीन वि. श्रीमति अजरा बानो) ---*88

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 133, 137, 138, 482 – लोक न्यूसेंस – कार्यवाहियों का अभिखण्डन – आवेदक के विरुद्ध लोक मार्ग पर अतिक्रमण करने के लिए संहिता की धारा 133 के अन्तर्गत कार्यवाही प्रारम्भ की गई – आवेदक ने सिविल वाद पेश किया और सिविल न्यायालय ने व्यादेश जारी किया – व्यादेश का आदेश आवेदक के पक्ष में होने के बावजूद एस.डी.एम. ने अतिक्रमण हटाने के लिए सशर्त आदेश पारित किया – कार्यवाही को चुनौती दी – अभिनिर्धारित – मजिस्ट्रेट को सर्वप्रथम संहिता की धारा 137(1) के अन्तर्गत जाँच करना चाहिए – ऐसी जाँच में, यदि वह पाता है कि विवादित भूमि पर लोक मार्ग के अस्तित्व से इंकारी के समर्थन में विश्वसनीय साक्ष्य है, तो वह सिविल न्यायालय द्वारा ऐसे अधिकार का अस्तित्व विनिश्चित किये जाने तक कार्यवाहियाँ रोक देगा – यदि वह पाता है कि कोई साक्ष्य नही है तो संहिता की धारा 138 के अन्तर्गत कार्यवाही करने के लिए अग्रसर होगा – याचिका निपटाई गई। (मोहम्मद ओसफ वि. मोहम्मद सईद) ---*87

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 146 – कुर्की – कब्जे के सम्बन्ध मे विवाद – आवेदक अभिलिखित भूमिस्वामी था, जबकि अनावेदक क्रमांक 1 के पास प्रतिकूल कब्जे के आधार पर स्वत्व घोषणा की डिक्री थी – एस.डी.एम. ने सम्पत्ति की कुर्की का आदेश पारित कर सम्पत्ति की देखभाल करने के लिए रिसीवर नियुक्त किया – अभिनिर्धारित – धारा 146 आकृष्ट – कुर्की का आदेश अवैध होना नही कहा जा सकता – तथापि, मजिस्ट्रेट ने कुर्की के समय पक्षकारों को कब्जे की उनकी हकदारी की स्थापना के लिए सक्षम सिविल न्यायालय के समक्ष जाने के लिए निदेशित न करने में त्रुटि की – याचिका इस निदेश के साथ निपटाई गई। (बसंत कुमार वि. श्रीमति कविता बाई) ...2728

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 – एफ.आई.आर. – एफ.आई. आर. दर्ज कराने और उसके अभिलिखित करने के समय के सम्बन्ध में परिवादी और आरक्षक के विरोधाभाषी कथन – ऐसा प्रतीत होता है कि एफ.आई.आर. दर्ज कराने का समय गढ़ा गया – एफ. आई.आर. विश्वसनीय नही। (नाथू वि. म.प्र. राज्य) ...2682

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 – एफ.आई.आर. – एफ.आई. आर. साक्ष्य का सारवान अंश नही है – यह केवल सम्पुष्टि करने और अभियोजन साक्षियों के कथन में विरोधाभाष, लोप और सुधारों को साबित करने के लिए प्रयुक्त की जा सकती है – केवल एफ. आई.आर. के आधार पर दोषसिद्धि पुष्ट नही की जा सकती। (गनेश उर्फ गनेशा उर्फ गनेश प्रसाद वि. म.प्र. राज्य) ...3026

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154, दण्ड संहिता, 1860, धारा 376, – एफ.आई.आर. – स्वयं एफ.आई.आर. साक्ष्य का सारभूत अंग नही है – अभियोक्त्री के

the F.I.R. could not be acted upon as the evidence of commission of rape by the appellant with her. [Suresh v. State of M.P.] ...3324

Criminal Procedure Code, 1973 (2 of 1974), Section 154, Police Regulations, Regulation 744 - *F.I.R. dictated by I.O. to another Sub-Inspector and scribe not examined in court - Held - F.I.R. shall be reduced to writing by officer-in-charge of police station to whom the report was made or can be recorded under his direction - There is no requirement to examine scribe - Case of prosecution not vitiated on account of flaw in F.I.R. or procedure adopted for recording F.I.R. - Regulation 744 is not applicable in the matters relating to the recording of F.I.R.* [Ashok v. State of M.P.]...2997

Criminal Procedure Code, 1973 (2 of 1974), Sections 156, 202(2) proviso - See - *Penal Code, 1860, Sections 147, 148, 323, 395 r/w 149.* [Nanjiram v. State of M.P.] ...2737

Criminal Procedure Code, 1973 (2 of 1974), Sections 156(3) & 190 - Difference of powers exercisable u/s 156(3) and Section 190 - *Opportunity of hearing to accused* - *There is a patent difference between the powers exercisable u/s 156(3) and Section 190 of the Code - Accused has no right of hearing before the magistrate issues an order u/s 156(3) of Code - If the police submits a report in favour of accused either in relation to all charges or some charges - Then the complainant would always have a right to file a protest petition and submit to the magistrate that the protest petition filed by the complainant in so far as it relates to all or some of the offences (alleged in complaint) should be treated as private complaint - Court should take cognizance u/s 190 of Code and proceed u/s 200 of Code.* [Lalit Sugandhi v. Mahendra Kumar Sugandhi] ...3348

Criminal Procedure Code, 1973 (2 of 1974), Sections 156(3) & 190 - *Once a complaint is filed and magistrate finds that a cognizable offence has been committed by the alleged accused person - Then instead of taking cognizance u/s 190 of the Code magistrate can direct the police to make investigation - If the police finds that the person has committed an offence then it may file a charge-sheet/Challan against the named accused and in case the police finds that no offence is made out, it can submit such report.* [Lalit Sugandhi v. Mahendra Kumar Sugandhi] ...3348

Criminal Procedure Code, 1973 (2 of 1974), Sections 156(3), 202 - *Procedure when offence complained of is triable exclusively by Court of Session - In case the offence is triable exclusively by the Court of Session - The magistrate has no jurisdiction to direct investigation by police in exercise of powers u/s 156(3) of Code - He has to make inquiry himself as provided u/s 202 of Code.* [Nanjiram v. State of M.P.] ...2737

Criminal Procedure Code, 1973 (2 of 1974), Section 157 - *Duty of investigator* - *Where during the investigation, previous history of insanity is*

साक्ष्य के अभाव में, एफ.आई.आर. में किये गये प्रकथनों पर अपीलार्थी द्वारा उसके साथ बलात्संग करने के साक्ष्य के रूप में कार्यवाही नही की जा सकती। (सुरेश वि. म.प्र. राज्य) ...3324

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154, पुलिस विनियम, विनियम 744 – एफ.आई.आर. अनुसंधान अधिकारी द्वारा अन्य उपनिरीक्षक को लिखवाई गई और लेखक का न्यायालय में परीक्षण नही कराया – अभिनिर्धारित – एफ.आई.आर. पुलिस थाने के भारसाधक अधिकारी द्वारा, जिसको रिपोर्ट की गई है, लेखबद्ध की जाएगी या उसके निदेश के अन्तर्गत लेखबद्ध की जा सकती है – लेखक का परीक्षण कराने की कोई आवश्यकता नही है – अभियोजन का मामला एफ.आई.आर. में त्रुटि या एफ.आई.आर. लेखबद्ध करने के लिए अपनाई गई प्रक्रिया के कारण दूषित नही होता – एफ.आई.आर. लेखबद्ध करने से सम्बन्धित मामलों में विनियम 744 लागू नही होता। (अशोक वि. म.प्र. राज्य) ...2997

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 156, 202(2) परन्तुक – देखें – दण्ड संहिता, 1860, धाराएँ 147, 148, 323, 395 सहपठित 149 (ननजीराम वि. म.प्र. राज्य) ...2737

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 156(3) व 190 – धारा 156(3) व धारा 190 के अधीन प्रयोग की जा सकने वाली शक्तियों का अंतर – अभियुक्त को सुनवाई का अवसर – संहिता की धारा 156(3) व धारा 190 के अधीन प्रयोग की जा सकने वाली शक्तियों में प्रत्यक्ष अंतर है – मजिस्ट्रेट द्वारा संहिता की धारा 156(3) के अधीन आदेश जारी करने के पूर्व अभियुक्त को सुनवाई का कोई अधिकार नही है – यदि पुलिस सभी या कुछ आरोपों के सम्बन्ध में अभियुक्त के पक्ष में रिपोर्ट पेश करती है – तब सदैव परिवादी को अभ्यापत्ति याचिका पेश करने और मजिस्ट्रेट के समक्ष यह निवेदन करने का अधिकार होगा कि परिवादी द्वारा पेश अभ्यापत्ति याचिका, जहाँ तक उसका सम्बन्ध सभी या कुछ अपराधों (परिवाद में अभिकथित अपराध) से है, को प्राइवेट परिवाद की तरह माना जाना चाहिए – न्यायालय को संहिता की धारा 190 के अधीन संज्ञान लेकर धारा 200 के अधीन कार्यवाही करने के लिए अग्रसर होना चाहिए। (ललित सुगंधी वि. महेन्द्र कुमार सुगंधी) ...3348

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 156(3) व 190 – जब एक बार परिवाद पेश किया जाता है और मजिस्ट्रेट यह पाता है कि कथित अभियुक्त व्यक्ति द्वारा संज्ञेय अपराध किया गया है – तब मजिस्ट्रेट संहिता की धारा 190 के अधीन संज्ञान लेने के बजाय पुलिस को अनुसंधान करने के लिए निदेश दे सकता है – यदि पुलिस यह पाती है कि व्यक्ति ने अपराध किया है तब वह बताये गये अभियुक्त के विरुद्ध आरोप–पत्र/चालान पेश कर सकती है और यदि पुलिस यह पाती है कि कोई अपराध नही बनता, वह ऐसी रिपोर्ट पेश कर सकती है। (ललित सुगंधी वि. महेन्द्र कुमार सुगंधी) ...3348

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 156(3), 202 – प्रक्रिया जब परिवादित अपराध अनन्यतः सेशन न्यायालय द्वारा विचारणीय है – यदि अपराध अनन्यतः सेशन न्यायालय द्वारा विचारणीय है – मजिस्ट्रेट को संहिता की धारा 156(3) के अन्तर्गत शक्तियों के प्रयोग में पुलिस द्वारा अनुसंधान करने का निदेश देने की अधिकारिता नही है – उसे संहिता की धारा 202 के उपबंधानुसार स्वयं जाँच करनी चाहिए। (ननजीराम वि. म.प्र. राज्य) ...2737

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 157 – अनुसंधानकर्ता का कर्तव्य – जहाँ अनुसंधान के दौरान पागलपन का पूर्व इतिहास प्रकट होता है तो एक ईमानदार अनुसंधानकर्ता का

revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the court, and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused - The onus, however, has to be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition and other relevant factors. [Hari Singh Gond v. State of M.P.] SC ...2764

Criminal Procedure Code, 1973 (2 of 1974), Section 161, Police Regulations, Regulation 744 - *Criticism levelled with regard to Section 161 statements having not recorded by I.O. as per provision of Regulation 744 - Held - The reference or allusion made to the diary in the regulation is not to the statements recorded but to the entries made with regard thereto.* [Ashok v. State of M.P.] ...2997

Criminal Procedure Code, 1973 (2 of 1974), Section 161, *Police Regulations, Regulation 744 - 161 statements do not form an integral part of the case diary, although the I.O. is required to record substance of the statement of the witnesses examined u/s 161 of the Code.* [Ashok v. State of M.P.]...2997

Criminal Procedure Code, 1973 (2 of 1974), Sections 161 & 162, Evidence Act, 1872, Section 3 - *It is well settled that the contents of the spot map prepared by police at the instance of a witness would be considered as the statement of the witness recorded u/s 161 of the Code - Contents of the map can be used u/s 161 of the Code for impeaching the testimony of witness on whose instance it was prepared.* [Narayan v. State of M.P.] ...2401

Criminal Procedure Code, 1973 (2 of 1974), Sections 162 - See - *Evidence Act, 1872, Section 9* [State of M.P. v. Tidda @ Sonu]. ...*90

Criminal Procedure Code, 1973 (2 of 1974), Sections 169 & 482 - See - *Penal Code 1860, Sections 147, 149, 294, 341, 323, 506-B, 307* [Rajkumar v. State of M.P.] ...2478

Criminal Procedure Code, 1973 (2 of 1974), Section 173(2) - ***Natural Justice*** - *Complainant not heard before accepting the Final Report and not taking cognizance of the offence - Held - A report u/s 173(2) of Cr.P.C. is submitted to a Magistrate by I.O. - Magistrate chooses not to take cognizance of offence or drop the proceedings against the accused or accused persons mentioned in F.I.R. - It is obligatory for Magistrate to provide an opportunity of hearing by issuance of notice to the complainant - Admittedly, the aforesaid opportunity has not been provided - The complainant who moves the criminal law into motion is entitled to know its result.* [Sangeeta Sharma Smt. (Dr.) v. State of M.P.] ...3345

Criminal Procedure Code, 1973 (2 of 1974), Section 173(8) -*During*

यह कर्तव्य है कि अभियुक्त को चिकित्सकीय परीक्षण के लिए भेजे और वह साक्ष्य न्यायालय के समक्ष पेश करे, और यदि ऐसा नही किया जाता है, तो यह अभियोजन के मामले में गम्भीर अशक्तता पैदा करता है और संदेह का लाभ अभियुक्त को देना पड़ता है – तथापि, अभियुक्त के अपराध के तत्काल पूर्व के आचरण और अपराध के समय या उसके तुरन्त बाद के आचरण के बारे में उसकी मानसिक दशा और अन्य सुसंगत कारकों का साक्ष्य पेश करके इस भार से उन्मोचित हो सकता है। (हरीसिंह गौंड वि. म.प्र. राज्य) SC --- 2764

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161, पुलिस विनियम, विनियम 744 – अनुसंधान अधिकारी द्वारा 161 के कथन विनियम 744 के अनुसार लेखबद्ध न करने के सम्बन्ध में आलोचना – अभिनिर्धारित – विनियम में डायरी की ओर संदर्भ या संकेत कथनों के लेखबद्ध करने से नही है बल्कि डायरी में की गई प्रविष्टियों से है। (अशोक वि. म.प्र. राज्य) ...2997

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161, पुलिस विनियम, विनियम 744 – धारा 161 के कथन केस डायरी का अभिन्न अंग नही हैं, यद्यपि अनुसंधान अधिकारी से अपेक्षित है कि साक्षियों की संहिता की धारा 161 के अन्तर्गत की गई परीक्षा का सार लेखबद्ध करे। (अशोक वि. म.प्र. राज्य) ...2997

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 व 162, साक्ष्य अधिनियम, 1872, धारा 3 – यह सुस्थापित है कि पुलिस द्वारा किसी साक्षी के प्रेरण पर तैयार घटना स्थल के नक्शे की अन्तर्वस्तु संहिता की धारा 161 के अधीन अभिलिखित साक्षी के कथन के रूप में विचार में ली जाएगी – संहिता की धारा 161 के अधीन नक्शे की अन्तर्वस्तु, साक्षी जिसके प्रेरण पर वह तैयार किया गया था, के अभिसाक्ष्य को अधिक्षेपित करने के लिए प्रयुक्त की जा सकती है। (नारायण वि. म.प्र. राज्य) ...2401

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 162 – देखें – साक्ष्य अधिनियम 1872, धारा 9 (म.प्र. राज्य वि. टिड्डा उर्फ सोनू) ---*90

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 169 व 482 – देखें – दण्ड संहिता 1860, धाराएँ 147, 149, 294, 341, 323, 506–बी, 307 (राजकुमार वि. म.प्र. राज्य)...2478

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 173(2) – नैसर्गिक न्याय – अंतिम रिपोर्ट स्वीकार करने और अपराध का संज्ञान न लेने के पूर्व परिवादी को नही सुना गया – अभिनिर्धारित – अनुसंधानकर्ता अधिकारी द्वारा मजिस्ट्रेट को द.प्र.सं. की धारा 173(2) के अन्तर्गत रिपोर्ट पेश की – मजिस्ट्रेट अपराध का संज्ञान न लेने का चयन करता है या एफ. आई.आर. में उल्लिखित अभियुक्त या अभियुक्त व्यक्तियों के विरुद्ध कार्यवाहियाँ समाप्त करता है – मजिस्ट्रेट के लिए यह अनिवार्य है कि परिवादी को सूचनापत्र जारी करके सुनवाई का अवसर प्रदान करे – स्वीकृत रूप से उपरोक्त अवसर प्रदान नही किया गया – परिवादी, जो दाण्डिक विधि के अन्तर्गत कार्यवाही प्रस्तावित करता है, उसका परिणाम जानने का हकदार है। (संगीता शर्मा श्रीमति (डॉ.) वि. म.प्र. राज्य) ...3345

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 173(8) – अनुसंधान के दौरान

investigation standard handwriting of accused (applicant) was collected and sent to handwriting expert but no definite opinion given by expert - Thereafter, charge-sheet filed - During trial another application filed by I.O. for collecting specimen handwriting afresh - Trial court allowed the application - Held - After charge-sheet is filed, I.O. is not precluded from obtaining and forwarding further evidence to magistrate - However, that evidence is to be forwarded by way of further report in respect of such evidence - Prosecution evidence has almost been completed - First report of expert was not favourable to prosecution - No provision under which such order can be passed - Trial court committed error in allowing application - Revision allowed. [Ravi Neal v. State of M.P.] ...2726

Criminal Procedure Code, 1973 (2 of 1974), Sections 177, 178, 179, Dowry Prohibition Act, 1961, Section 4 r/w Section 6 - *Territorial jurisdiction* *- Offence alleged to have committed in Ujjain and complaint filed at Vidisha wherein non-applicant residing with her parents - Held - The venue of enquiry or trial of case is determined by averments made in complaint - The question of jurisdiction is question of law and fact and it needs enquiry - Cannot be interfered by the High Court.* [Neeraj Rathore v. Smt. Pramodin Rathore]...2734

Criminal Procedure Code, 1973 (2 of 1974) Sections 190 & 197 - See - *Sahkari Krishi Aur Gramin Vikas Bank Adhiniyam, M.P., 1999, Section 50(2)* [Arvind Kumar Bhargava v. Lalit Parashar] ...2471

Criminal Procedure Code, 1973 (2 of 1974), Section 197, Penal Code, 1860, Sections 166, 294, 451 - *Sanction of prosecution* *- Magistrate taking cognizance against non-applicant for offence u/s 166, 294, 451 I.P.C. - Order set-aside in revision on the ground that sanction u/s 197 of Code was not obtained - Order challenged before High Court - Held - At the time of incident, non-applicant was probationary Naib Tahsildar - He was acting in discharge of his duties - He was not removable from service except the order of State Government - Sanction of State Government necessary prior to taking cognizance of the alleged offence - The same has not been taken - Revisional court has rightly held the application of bar of Section 197 of Code - Revision dismissed.* [Shameem Khatoon (Smt.) v. R.P. Ramanwal] ...*89

Criminal Procedure Code, 1973 (2 of 1974), Section 202(2) proviso - *Effect of non-compliance of proviso* *- Statute does not expressly provide for nullification of the committal order - But provides that unless prejudice is caused, the order is not to be set-aside - This would mean that during inquiry u/s 202 of Code when magistrate examines the witnesses on oath, as far as possible proviso is to be complied with but the mandate is not absolute - Further, where objection as to how prejudice was caused, was not raised at earliest stage, fresh inquiry into Section 202 is unnecessary.* [Nanjiram v. State of M.P.] ...2737

अभियुक्त (आवेदक) के मानक हस्ताक्षर संकलित कर हस्तलेख विशेषज्ञ को भेजे गये, किन्तु विशेषज्ञ ने कोई निश्चित राय नही दी – तत्पश्चात् आरोप–पत्र पेश किया गया – विचारण के दौरान अनुसंधान अधिकारी द्वारा नये नमूना हस्ताक्षर संकलित करने के लिए अन्य आवेदन पेश किया गया – विचारण न्यायालय ने आवेदन स्वीकार किया – अभिनिर्धारित – आरोप–पत्र पेश होने के उपरांत अनुसंधान अधिकारी अतिरिक्त साक्ष्य प्राप्त करने और मजिस्ट्रेट को प्रेषित करने से निवारित नही हो जाता – तथापि वह साक्ष्य, ऐसी साक्ष्य के सम्बन्ध में अतिरिक्त रिपोर्ट के रूप में प्रेषित की जाना चाहिए – अभियोजन साक्ष्य लगभग पूर्ण हो चुकी है – विशेषज्ञ की प्रथम रिपोर्ट अभियोजन के अनुकूल नही थी – कोई उपबंध नही जिसके अन्तर्गत ऐसा आदेश पारित किया जा सकता हो – विचारण न्यायालय ने आवेदन मंजूर करने में त्रुटि कारित की – पुनरीक्षण मंजूर। (रवि नील वि. म.प्र. राज्य) ...2726

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 177, 178, 179, दहेज प्रतिषेध अधिनियम, 1961, धारा 4 सहपठित धारा 6 – क्षेत्रीय अधिकारिता – अपराध कथित रूप से उज्जैन में कारित और परिवाद विदिशा में पेश जहाँ अनावेदक अपने माता–पिता के साथ रह रही थी – अभिनिर्धारित – मामले की जाँच और विचारण का स्थान परिवाद में किये गये प्रकथनों द्वारा अवधारित किया जाता है – अधिकारिता का प्रश्न विधि और तथ्य का प्रश्न है उसमें जाँच की आवश्यकता है – उच्च न्यायालय द्वारा हस्तक्षेप नही किया जा सकता। (नीरज राठौर वि. श्रीमति प्रमोदिन राठौर) ...2734

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 190 व 197 – देखें –सहकारी षि और ग्रामीण विकास बैंक अधिनियम, म.प्र., 1999, धारा 50(2), (अरविंद कुमार भार्गव वि. ललित पाराशर) ...2471

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 197, दण्ड संहिता, 1860, धाराएँ 166, 294, 451 – अभियोजन की मंजूरी – मजिस्ट्रेट ने अनावेदक के विरुद्ध भा.द.सं. की धारा 166, 294, 451 के अन्तर्गत अपराध के लिए संज्ञान लिया – आदेश पुनरीक्षण में इस आधार पर अपास्त कर दिया गया कि संहिता की धारा 197 के अन्तर्गत मंजूरी प्राप्त नही की गई – आदेश को उच्च न्यायालय के समक्ष चुनौती दी गई – अभिनिर्धारित – घटना के समय अनावेदक परिवीक्षाधीन नायब तहसीलदार था – वह अपने कर्तव्यों का निर्वहन कर रहा था – उसे राज्य सरकार के आदेश के बिना सेवा से पृथक नही किया जा सकता था – कथित अपराध का संज्ञान लेने से पूर्व राज्य सरकार की मंजूरी आवश्यक – जो नहीं ली गई – पुनरीक्षण न्यायालय ने संहिता की धारा 197 की बाधा लागू करना उचित रूप से अभिनिर्धारित किया – पुनरीक्षण खारिज। (शमीम खातून (श्रीमति) वि. आर. पी. रमनवाल) ...*89

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 202(2) परन्तुक – परन्तुक के अपालन का प्रभाव – अधिनियमिति मामले के सुपुर्द करने के आदेश के अकृतिकरण के लिए अभिव्यक्त रूप से उपबंध नही करती है – किन्तु यह उपबंधित करती है कि यदि पूर्वाग्रह कारित नही हुआ है तो आदेश अपास्त नही किया जाना चाहिए – इसका अर्थ यह होगा कि संहिता की धारा 202 के अन्तर्गत जब मजिस्ट्रेट जाँच के दौरान साक्षियों का शपथ पर परीक्षण करता है, जहाँ तक संभव हो परन्तुक का पालन करना चाहिए किन्तु मेंडेट निरपेक्ष नहीं है – जहाँ पूर्वाग्रह कारित होने की आपत्ति प्रारम्भिक प्रक्रम पर न उठायी गई हो, वहाँ धारा 202 में नवीन जाँच अनावश्यक है। (ननजीराम वि. म.प्र. राज्य) ...2737

Criminal Procedure Code, 1973 (2 of 1974), Section 216, Prevention of Corruption Act, 1988, Section 13(1)(d), (2) - *Alteration of Charges - Charge sheet filed against applicants and other accused persons u/ss 420, 467, 468, 471, 120B of IPC and Section 13(1)(d) r/w 13(2) of the Act - No charge u/s 13(1)(d), (2) of the Act framed against applicants although the same was framed against some of co-accused persons - Charges can be altered or added at any time - Framing of charge u/s 13(1)(d), (2) of the Act not illegal.* [Manjulata Tiwari (Smt.) v. State of M.P.] ...2731

Criminal Procedure Code, 1973 (2 of 1974), Section 217 - *Recall of witnesses when charge altered - Charges altered or added by trial court - Interest of prosecution and defence of accused to be safeguarded by permitting them to further examining or cross-examine witnesses - Order refusing to recall witnesses set-aside.* [Manjulata Tiwari (Smt.) v. State of M.P.] ...2731

Criminal Procedure Code, 1973 (2 of 1974), Sections 239, 245 & 258, Negotiable Instruments Act, 1881, Section 138 - *Applicability of Sections 239, 245 & 258 of Code in complaint u/s 138 N.I. Act - Applicant filed complaint u/s 138 of Act - N.A. filed an application u/s 245 of Code for dismissal of complaint as it being barred by limitation - Magistrate allowed the application and dismissed the complaint as time barred - Order challenged in High Court u/s 482 of Code - Held - Present complaint is a summon case - Provisions of Sections 239 & 245 of Code are applicable in warrant cases - Though the provisions of Section 258 of Code are applicable in summons cases but only in those summons cases which are instituted otherwise than upon complaint - Magistrate has committed error in allowing the application u/s 245 of Code - Petition allowed.* [Girraj Patwa v. Dayaram] ...3355

Criminal Procedure Code, 1973 (2 of 1974), Section 311-A - *Power of magistrate to order person to give specimen signatures or handwriting - Charge-sheet filed against applicant and almost all prosecution witnesses examined - Investigation Officer also partially examined - Provision not attracted.* [Ravi Neal v. State of M.P.] ...2726

Criminal Procedure Code, 1973 (2 of 1974), Section 340, Constitution, Article 226 - *False statement in writ petition - Petitioner filed first writ petition alleging that without deciding his application for amendment, the prescribed authority is proceeding with election petition - Petition disposed of by order dated 16.05.2007 with direction to decide amendment application - Second writ petition filed alleging that application has been rejected by order dated 20.04.2007 which is an antedated order - Held - Amendment application was filed on 04.05.2007 and was partly allowed on the same day and amendment was carried out by petitioner in his written statement - Petitioner has knowingly made false statement in order to gain undue favour - Registrar (Judicial) directed to send matter by making appropriate complaint to competent court for registering case.* [Bhavani Shankar Sharma v. Keshri Singh Chouhan] ...3082

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 216, भृष्टाचार निवारण अधिनियम, 1988, धारा 13(1)(डी), (2) – आरोपों का परिवर्तन – आवेदकों और अन्य अभियुक्त व्यक्तियों के विरुद्ध भा.द.सं. की धारा 420, 467, 468, 471, 120बी और अधिनियम की धारा 13(1)(डी) सहपठित 13(2) के अन्तर्गत आरोप–पत्र पेश किया गया – आवेदकों के विरुद्ध अधिनियम की धारा 13(1)(डी), (2) के अन्तर्गत कोई आरोप विरचित नही किया गया यद्यपि वह सहअभियुक्त व्यक्तियों में से कुछ के विरुद्ध विरचित किया गया – आरोप किसी भी समय परिवर्तित या परिवर्धित किये जा सकते हैं – अधिनियम की धारा 13(1)(डी), (2) के अन्तर्गत आरोप विरचित करना अवैध नही। (मंजूलता तिवारी (श्रीमति) वि. म.प्र. राज्य) ...2731

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 217 – जब आरोप परिवर्तित किया जाता है तब साक्षियों का पुनः बुलाया जाना – आरोप विचारण न्यायालय द्वारा परिवर्तित या परिवर्धित किये गये – अभियोजन का हित और अभियुक्त की प्रतिरक्षा उन्हें साक्षियों का अतिरिक्त परीक्षण या प्रतिपरीक्षण करने की अनुमति देकर सुरक्षित रखा जाना चाहिए – साक्षियों को पुनः बुलाने से इंकार करने वाला आदेश अपास्त। (मंजूलता तिवारी (श्रीमति) वि. म.प्र. राज्य) ...2731

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 239, 245 व 258, परक्राम्य लिखत अधिनियम, 1881, धारा 138 – परक्राम्य लिखत अधिनियम की धारा 138 के अन्तर्गत परिवाद में संहिता की धारा 239, 245 व 258 का लागू होना – आवेदक ने अधिनियम की धारा 138 के अन्तर्गत परिवाद पेश किया – अनावेदक ने परिवाद की खारिजी के लिए संहिता की धारा 245 के अन्तर्गत आवेदन पेश किया कि वह परिसीमा से वर्जित था – मजिस्ट्रेट ने आवेदन मंजूर किया और परिवाद समय वर्जित होने से खारिज किया – आदेश को संहिता की धारा 482 के अन्तर्गत उच्च न्यायालय में चुनौती दी गई – अभिनिर्धारित – वर्तमान परिवाद एक समन मामला है – संहिता की धारा 239 व 245 के उपबंध वारंट मामलों में लागू होते हैं – यद्यपि संहिता की धारा 258 के उपबंध समन मामलों में लागू होते हैं किन्तु केवल उन समन मामलों में जो परिवाद से भिन्न आधार पर संस्थित किये जाते हैं – मजिस्ट्रेट ने संहिता की धारा 245 के अन्तर्गत आवेदन मंजूर करने में त्रुटि की – याचिका मंजूर। (गिरिराज पटवा वि. दयाराम) ...3355

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 311–ए – नमूना हस्ताक्षर या हस्तलेख देने के लिए किसी व्यक्ति को आदेश देने की मजिस्ट्रेट की शक्ति – आवेदक के विरुद्ध आरोप–पत्र पेश और लगभग सभी अभियोजन साक्षियों का परीक्षण किया गया – अनुसंधान अधिकारी का भी अंशतः परीक्षण किया गया – प्रावधान आकृष्ट नही होता है। (रवि नील वि. म.प्र. राज्य) ...2726

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 340, संविधान, अनुच्छेद 226 – रिट याचिका में मिथ्या कथन – याची ने प्रथम रिट याचिका यह अभिकथन करते हुए पेश की कि उसका संशोधन का आवेदन विनिश्चित किये बिना विहित प्राधिकारी ने चुनाव याचिका में कार्यवाही की – याचिका आदेश तारीख 16.05.2007 द्वारा संशोधन आवेदन विनिश्चित करने के निदेश के साथ निपटायी गई – द्वितीय रिट याचिका यह अभिकथन करते हुए पेश की गई कि आवेदन आदेश तारीख 20.04.2007 द्वारा निरस्त कर दिया गया है जो पूर्वदिनांकित आदेश है – अभिनिर्धारित – संशोधन आवेदन 04.05.2007 को पेश किया गया और उसी दिन अंशतः मंजूर किया गया और याची द्वारा अपने प्रतिवाद पत्र में संशोधन समाविष्ट किया गया – याची ने अनुचित सहायता प्राप्त करने के लिए जानबूझकर मिथ्या कथन किये – रजिस्ट्रार (न्यायिक) को समुचित परिवाद सक्षम न्यायालय को मामला दर्ज करने के लिए भेजने का निदेश दिया। (भवानी शंकर शर्मा वि. केसरीसिंह चौहान) ...3082

Criminal Procedure Code, 1973 (2 of 1974), Section 357(3) - *Order of payment of compensation - Accused treated victim in proper hospital and spent considerable amount - Victim himself was partly responsible for accident as he has not taken proper care - Compensation of Rs.20,000/- would meet ends of justice.* [Mahesh v. State of M.P.] ...*79

Criminal Procedure Code, 1973 (2 of 1974), Section 357(3), Penal Code, 1860, Section 287 - *Order of payment of compensation - Victim suffered grievous injuries while operating thresher machine under the employment of accused - Presence of accused at spot and evidence of witnesses regarding negligence of accused - Held - Accused guilty of offence u/s 287 IPC - However - Custodial sentence reduced to period already undergone on payment of compensation.* [Mahesh v. State of M.P.] ...*79

Criminal Procedure Code, 1973 (2 of 1974), Section 374(2), Narcotics Drugs and Psychotropic Substances Act, 1985, Section 8 r/w 20(b)(iii)(b) - *Appellant No.1 was convicted for the charge that on search of his house 12 Kg Ganja was found - Whereas appellant No.2 was convicted on the allegation that at the time of search he was present and weights, measures and Rs.743/ - were seized from him - Appellants challenged their conviction before High Court - Held - No evidence is produced that appellant No.2 was also selling Ganja with appellant No.1 - Merely his presence is not sufficient to prove that he was dealing in Ganja - There is no evidence to connect complicity of appellant No.2 with this offence - Defence story of appellant No.2 that he suggested police officer not to use third degree methods against appellant No.1 on account of which he has been implicated in this case - Cannot be said to be unreasonable - Conviction of appellant No.2 set-aside - Appeal partly allowed.* [Kuldeep Sahu v. State of M.P.] ...2985

Criminal Procedure Code, 1973 (2 of 1974), Section 374(2) - See - *Penal Code 1860, Section 302* [Gudda @ Raho @ Gajdhar v. State of M.P.] ...2218

Criminal Procedure Code, 1973 (2 of 1974), Section 374(2) - See - *Prevention of Corruption Act 1988, Sections 7, 13(1)(d) r/w Section 13(2)* [Navkant Sharma v. State of M.P.] ...2425

Criminal Procedure Code, 1973 (2 of 1974), Section 378(1) - See - *Penal Code 1860, Section 302 r/w Section 34* [State of M.P. v. Ballu @ Vinod Kumar] ...2420

Criminal Procedure Code, 1973 (2 of 1974), Section 378(3), Penal Code, 1860, Section 304B - *Dowry Death - Wife of accused committed suicide within 7 years of marriage - There is no evidence about the amount having been demanded - In reply of notice sent on behalf of wife, ill treatment by husband not mentioned - Acquittal - Held - Dowry demand and cruelty on failure to conceive not proved - Prosecution failed to discharge burden - Conclusions drawn by trial court from evidence brought on record are*

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 357(3) – प्रतिकर के संदाय का आदेश – अभियुक्त ने पीड़ित का उपयुक्त अस्पताल में उपचार कराया और पर्याप्त रकम खर्च की – पीड़ित स्वयं घटना के लिए भागतः उत्तरदायी था क्योंकि उसने उचित सतर्कता नही बरती – 20,000/– रुपये का प्रतिकर न्याय के लक्ष्य की पूर्ति करेगा। (महेश वि. म.प्र. राज्य) ...*79

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 357(3), दण्ड संहिता, 1860 धारा 287 – प्रतिकर के संदाय का आदेश – अभियुक्त के नियोजन के अन्तर्गत थ्रेसर मशीन चलाते समय पीड़ित को गम्भीर क्षतियाँ आयीं – अभियुक्त की घटना स्थल पर उपस्थिति और उसकी उपेक्षा के सम्बंध में साक्षियों का साक्ष्य – अभिनिर्धारित – अभियुक्त भा.द.सं. की धारा 287 के अन्तर्गत अपराध का दोषी – तथापि, अभिरक्षा का दण्डादेश प्रतिकर का संदाय करने पर पहले ही भोगी जा चुकी अवधि तक कम किया गया। (महेश वि. म.प्र. राज्य) ...*79

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 374(2), स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985, धारा 8 सहपठित 20(बी)(**iii**)(बी) – अपीलार्थी क्र. 1 इस आरोप के लिए दोषसिद्ध किया गया कि उसके घर की तलाशी पर 12 किग्रा गांजा पाया गया – जबकि अपीलार्थी क्र. 2 को इस आरोप पर दोषसिद्ध किया गया कि तलाशी के समय वह उपस्थित था और तराजू, बांट और 743/– रुपये उससे अभिग्रहीत किये गये – अपीलार्थियों ने उनकी दोषसिद्धि को उच्च न्यायालय के समक्ष चुनौती दी – अभिनिर्धारित – कोई साक्ष्य पेश नही की गई कि अपीलार्थी क्र. 2 भी अपीलार्थी क्र. 1 के साथ गांजा बेच रहा था – केवल उसकी उपस्थिति यह साबित करने के लिए पर्याप्त नही है कि वह गांजे का संव्यवहार कर रहा था – इस अपराध से अपीलार्थी क्र. 2 की सह–अपराधिता जोड़ने के लिए कोई साक्ष्य नही है – अपीलार्थी क्र. 2 की प्रतिरक्षा की कहानी कि उसने पुलिस अधिकारी को अपीलार्थी क्र. 1 के विरुद्ध थर्ड डिग्री पद्धति का प्रयोग न करने का सुझाव दिया जिसके कारण उसे इस मामले में आलिप्त किया गया – अयुक्तियुक्त नही कही जा सकती – अपीलार्थी क्र. 2 की दोषसिद्धि अपास्त – अपील अंशतः मंजूर। (कुलदीप साहू वि. म.प्र. सज्य) ...2985

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 374(2) – देखें –दण्ड संहिता 1860, धारा 302 (गुड्डा उर्फ राहो उर्फ गजधर वि. म.प्र. राज्य) ...2218

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 374(2) – देखें – भ्रष्टाचार निवारण अधिनियम 1988, धाराएँ 7, 13(1)(डी) सहपठित धारा 13(2) (नवकांत शर्मा वि. म.प्र. राज्य) ...2425

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) धारा 378(1) – देखें –दण्ड संहिता 1860, धारा 302 सहपठित धारा 34 (म.प्र. राज्य वि. बल्लू उर्फ विनोद कुमार) ...2420

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 378(3), दण्ड संहिता, 1860, धारा 304बी – दहेज मृत्यु – अभियुक्त की पत्नी ने विवाह के 7 वर्ष के भीतर आत्महत्या की – रकम की माँग की जाने के बारे में कोई साक्ष्य नही – पत्नी की ओर से भेजे गये सूचनापत्र के जवाब में पति द्वारा बुरा बर्ताव किया जाना उल्लिखित नही – दोषमुक्ति – अभिनिर्धारित – दहेज की माँग और गर्भधारण करने में असफलता पर क्रूरता साबित नही – अभियोजन भार उन्मुक्त करने में असफल रहा – अभिलेख पर आयी साक्ष्य से विचारण न्यायालय द्वारा निकाले गये निष्कर्ष

reasonable & proper - Appeal against acquittal dismissed. [State of M.P. v. Rajesh] ...2670

Criminal Procedure Code, 1973 (2 of 1974), Section 386 - *Appeal - Both appellant and his counsel remained absent on various appointed days for hearing - Appeal can be heard finally on merit.* [Arshad @ Arsad v. State of M.P.] ...3278

Criminal Procedure Code, 1973 (2 of 1974), Section 386 - *Court shall decide the appeal on mertis, cannot dismiss for default - Appeal against acquittal filed by complainant - On two dates respondent (accused) and his counsel were not present - Even after intimating the date by issuance of special post card, respondent and his counsel not present - High Court heard appeal on merit in absence of respondent as well as his counsel.* [Mujaffar Hussain Mansoori v. Devendra Trivedi] ...2687

Criminal Procedure Code, 1973 (2 of 1974), Sections 397, 401, Penal Code, 1860, Section 420 - *Applicant was found travelling on complementary pass - On investigation pass was found to be forged - Offence of forgery established - However, applicant being government servant and incident being 18 years old, applicant deserves benefit of probation.* [Pramod v. State of M.P.] ...2466

Criminal Procedure Code, 1973 (2 of 1974), Section 433, Prevention of Food Adulteration Act, 1954, Sections 7(1) & 16(1)(a)(i) - ***Sale of adulterated milk*** - *Variance in report of Public Analyst and Central Laboratory - Both reports analyzed sample of milk adulterated - Samples were duly obtained after stirring, measured and properly sealed - Held - Conviction for offence is in accordance with law - Looking to the young age of accused and the minimum Jail sentence of six months imposed by court below - It is directed that on depositing the enhanced fine Rs.10,000 within 6 weeks the State Government may formalize the matter by passing an appropriate order u/s 433(d) of the Code.* [Antar Singh v. State of M.P.] ...*91

Criminal Procedure Code, 1973(2 of 1974), Section 433 - **See** - *Prevention of Food Adulteration Act 1954, Section 16(1)(a) r/w Section 7(1)* [Tulsiram v. State of M.P.] ...2462

Criminal Procedure Code, 1973 (2 of 1974), Section 438 - ***Period of Anticipatory Bail*** - *Cognizance of offences u/s 406 & 420 r/w 34 I.P.C. was taken upon the complaint - Applicants granted anticipatory bail for a period of 60 days - Petition u/s 482 of Code filed to quash proceedings - High Court stayed further proceedings - Prayer made to extend the period of anticipatory bail till decision of petition u/s 482 of Code - Held - Anticipatory bail orders cannot be kept in abeyance or cannot be extended for indefinite period - In case petition u/s 482 of Code is dismissed, applicants can re-*

तर्कसंगत एवं उचित – दोषमुक्ति के विरुद्ध अपील खारिज। (म.प्र. राज्य वि. राजेश) ...2670

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 386 – अपील – अपीलार्थी और उसके अधिवक्ता दोनों सुनवाई के लिए नियत विभिन्न तारीखों पर अनुपस्थित रहे – अपील गुणदोषों पर अंतिम रूप से सुनी जा सकती है। (अरशद उर्फ अरसद वि. म.प्र. राज्य) ...3278

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 386 – न्यायालय अपील का विनिश्चय गुणदोषों पर करेगा, व्यतिक्रम के लिए खारिज नही कर सकता – परिवादी द्वारा दोषमुक्ति के विरुद्ध अपील पेश की गई – दो तिथियों पर प्रत्यर्थी (अभियुक्त) और उसके वकील उपस्थित नही हुए – तिथि की सूचना विशेष पोस्टकार्ड द्वारा देने के बाद भी प्रत्यर्थी और उसके वकील उपस्थित नही हुए – उच्च न्यायालय ने प्रत्यर्थी और साथ ही उसके वकील की अनुपस्थिति में अपील की गुणदोषों पर सुनवाई की। (मुजफर हुसैन मंसूरी वि. देवेन्द्र त्रिवेदी) ...2687

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 397, 401, दण्ड संहिता, 1860, धारा 420 – आवेदक कम्पलीमेंटरी पास पर यात्रा करता हुआ पाया गया – अनुसंधान में पास कूटरचित होना पाया गया – कूटरचना का अपराध सिद्ध – तथापि आवेदक शासकीय सेवक होने और घटना 18 वर्ष पुरानी होने से आवेदक परिवीक्षा का लाभ पाने का पात्र। (प्रमोद वि. म.प्र. राज्य) ...2466

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 433, खाद्य अपमिश्रण निवारण अधिनियम, 1954, धाराएँ 7(1) व 16(1)(ए)(i) – अपमिश्रित दूध का विक्रय – लोक विश्लेषक और केन्द्रीय प्रयोगशाला की रिपोर्ट में भिन्नता – दोनों रिपोर्टों में दूध के नमूने का विश्लेषण कर अपमिश्रित पाया – नमूने हिलाने के बाद, नापकर और उचित रूप से सील करके सम्यक् रूप से लिये गये – अभिनिर्धारित – अपराध के लिये दोषसिद्धि विधि के अनुसार है – अभियुक्त की युवावस्था और अधीनस्थ न्यायालय द्वारा आधिरोपित छः माह के न्यूनतम जेल दण्डादेश को देखते हुए – यह निदेशित किया जाता है कि बढ़ा हुआ जुर्माना 10,000 रुपये 6 सप्ताह में जमा करने पर राज्य सरकार संहिता की धारा 433(डी) के अन्तर्गत मामले में समुचित आदेश पारित करे। (अंतर सिंह वि. म.प्र. राज्य) ---*91

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 433 – देखें – खाद्य अपमिश्रण निवारण अधिनियम 1954, धारा 16(1)(ए) सहपठित धारा 7(1) (तुलसीराम वि. म.प्र. राज्य) ...2462

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – अग्रिम जमानत की कालावधि – परिवाद पर भा.द.सं. की धारा 406 व 420 सहपठित धारा 34 के अपराध का संज्ञान लिया गया – आवेदकों को 60 दिनों की कालावधि के लिए अग्रिम जमानत प्रदान की गई – संहिता की धारा 482 के अन्तर्गत कार्यवाहियों को अभिखण्डित करने के लिए याचिका पेश की गई – उच्च न्यायालय ने आगे की कार्यवाहियाँ रोक दीं – अग्रिम जमानत की कालावधि संहिता की धारा 482 के अन्तर्गत याचिका के विनिश्चय तक बढ़ाने के लिये प्रार्थना की गई – अभिनिर्धारित – अग्रिम जमानत के आदेश मुल्तवी नही रखे जा सकते या अनिश्चित कालावधि के लिए विस्तारित नही किये जा सकते – यदि संहिता की धारा 482 के अन्तर्गत याचिका निरस्त हो जाती है तो आवेदक आदेश दिनांक

agitate prayer for extension of anticipatory bail within period of 10 days from the date of order. [Gopichand Khatri v. Sushil Kumar Pamnani] ...*85

Criminal Procedure Code, 1973 (2 of 1974), Section 452 - *Disposal of property - Appellant denied seizure of property from himself - He failed to lead any evidence to establish entitlement to have possession of property - Held - For return of property the appellant has to claim property and establish that he is the person entitled for possession - Appellant not entitled for property - Cash amount directed to be returned to the society instead of complainant who was employee of that society - Judgment of trial court amended.* [Mahendrasingh v. State of M.P.] ...2989

Criminal Procedure Code, 1973 (2 of 1974), Section 464 - *Effect of omission to frame, or absence of, or error in, charge - Finding of conviction cannot be held to be invalid as omission to frame, or absence of, or error in, charge did not result in any prejudice to accused nor it occasioned failure of justice.* [Anil Kumar Gupta v. State of M.P.] ...2453

Criminal Procedure Code, 1973 (2 of 1974), Section 482, Income Tax Act, 1961, Sections 276C, 278B - *Criminal case initiated on ground that petitioner firm made payment of interest without deduction of tax at source - Tax not deposited in department - Quashment of proceeding on ground that tribunal has set-aside penalty which was levied by Assessing Officer - Held - Since assessee had deducted TDS and deposited the same in department, though late, but it has already suffered interest - Tribunal set-aside the penalty, therefore, basis of prosecution has already gone - Prosecution quashed.* [Harkawat & Company (M/S) v. Union of India] ...*77

Criminal Trial - *Practice & Procedure - Counter case - The basic principle of criminal jurisprudence is that each case is to be decided on the basis of its own oral & documentary evidence adduced by either party and not extraneous material (i.e. evidence produced in counter case) can be taken into consideration.* [Narayan v. State of M.P.] ...2401

Court Fees Act, (7 of 1870), Section 35 - See - *Constitution, Articles 216, 225, 226* [S.P. Anand v. The Registrar General, M.P. High Court, Jabalpur](FB)...2172

Defence of Accused - *If the defence is found probable, due weightage should be given to it.* [Navkant Sharma v. State of M.P.] ...2425

Delimitation Act (33 of 2002), Section 9(2) - *Delimitation of constituencies - Mhow was to be included in Indore parliamentary constituency as per notification dated 19.01.2007 - Residents of Mhow did not file any objection - Commission decided to include Mhow in Dhar parliamentary constituency instead of Indore parliamentary constituency - Held - No provision requiring Delimitation Commission to again publish proposal or invite objections and suggestions and hold public meetings if*

से 10 दिन की कालावधि में अग्रिम जमानत आगे बढ़ाने के लिए पुनः प्रार्थना कर सकते हैं। (गोपीचंद खन्नी वि. सुशील कुमार पमनानी) ---*85

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 452 – सम्पत्ति का व्ययन – अपीलार्थी ने उससे सम्पत्ति अभिग्रहीत की जाना अस्वीकार किया – वह सम्पत्ति का कब्जा रखने की हकदारी स्थापित करने के लिए कोई साक्ष्य प्रस्तुत करने में असफल रहा – अभिनिर्धारित – सम्पत्ति की वापसी के लिए अपीलार्थी को सम्पत्ति का दावा करना चाहिए और यह स्थापित करना चाहिए कि वही कब्जे के लिए हकदार व्यक्ति है – अपीलार्थी सम्पत्ति के लिए हकदार नही – नगद राशि परिवादी, जो सोसायटी का कर्मचारी है, के स्थान पर सोसायटी को वापस किये जाने का निदेश दिया गया – विचारण न्यायालय का निर्णय संशोधित किया गया। (महेन्द्रसिंह वि. म.प्र. राज्य) ...2989

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 464 – आरोप विरचित न करने या उसके अभाव या उसमें गलती का प्रभाव – दोषसिद्धि का निष्कर्ष अविधिमान्य अभिनिर्धारित नहीं किया जा सकता क्योंकि आरोप विरचित न करने, या उसके अभाव, या उसमें गलती, के परिणामस्वरूप अभियुक्त पर कोई प्रतिकूल प्रभाव नहीं पड़ा और न इसके कारण न्याय की विफलता हुई। (अनिल कुमार गुप्ता वि. म.प्र. राज्य) ...2453

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, आयकर अधिनियम, 1961, धाराएँ 276सी, 278बी – दाण्डिक मामला इस आधार पर प्रारम्भ किया गया कि याची फर्म ने मूल पर टैक्स की कटौती किये बिना ब्याज का संदाय किया – टैक्स विभाग में जमा नही किया गया – कार्यवाही का अभिखण्डन इस आधार पर कि अधिकरण ने निर्धारण अधिकारी द्वारा आरोपित शास्ति अपास्त कर दी – अभिनिर्धारित – चूंकि निर्धारिती ने टीडीएस की कटौती की और राशि विभाग में जमा की, यद्यपि विलम्ब से जमा की, किन्तु ब्याज पूर्व में ही जमा किया जा चुका था – अधिकरण ने शास्ति अपास्त कर दी, इसलिए अभियोजन का आधार पहले ही समाप्त हो चुका है – अभियोजन अभिखण्डित। (हरकावत एन्ड कं. (मे.) वि. यूनियन ऑफ इंडिया) ---*77

दाण्डिक विचारण – पद्धति और प्रक्रिया – प्रति–मामला – आपराधिक विधिशास्त्र का आधारभूत सिद्धांत है कि प्रत्येक मामले का विनिश्चय पक्षकारों द्वारा उसी मामले में प्रस्तुत मौखिक व दस्तावेजी साक्ष्य के आधार पर करना होता है और बाहरी सामग्री (अर्थात् प्रति–मामले में प्रस्तुत साक्ष्य) को विचार में नहीं लिया जा सकता। (नारायण वि. म.प्र. राज्य) ...2401

न्यायालय फीस अधिनियम, (1870 का 7), धारा 35 – देखें – संविधान, अनुच्छेद 216, 225, 226, (एस.पी. आनंद वि. द रजिस्ट्रार जनरल, एम.पी. हाई कोर्ट, जबलपुर)(FB)---2172

अभियुक्त की प्रतिरक्षा – यदि प्रतिरक्षा अधिसंभाव्य पायी जाती है तो उसे सम्यक् अधिमान दिया जाना चाहिए। (नवकांत शर्मा वि. म.प्र. राज्य) ...2425

परिसीमन अधिनियम (2002 का 33), धारा 9(2) – निर्वाचन क्षेत्रों का परिसीमन – अधिसूचना तारीख 19.01.2007 के अनुसार महू को इन्दौर संसदीय निर्वाचन क्षेत्र में सम्मिलित करना था – महू के निवासियों ने कोई आपत्ति पेश नही की – आयोग ने महू को इन्दौर संसदीय निर्वाचन क्षेत्र के स्थान पर धार संसदीय निर्वाचन क्षेत्र में सम्मिलित करने का निर्णय किया – अभिनिर्धारित – यदि आयोग प्रकाशित मूल प्रस्ताव परिवर्तित करने का निर्णय करता है तो परिसीमन आयोग से अपेक्षा करने वाला कोई उपबंध नही कि दोबारा प्रस्ताव प्रकाशित करे या आपत्तियाँ और सुझाव आमंत्रित करे तथा लोक बैठकें आयोजित करे – आयोग को अपना निर्णय प्रकाशित करने,

the Commission decides to change the original proposal as published - Commission was not required to publish its decision and invite objections and hold one or more public meetings - Petition dismissed. [Association of the Resident of Mhow v. Delimitation Commission of India] ...2809

**Delimitation Act (33 of 2002), Sections 9 & 10(1), Constitution, Articles 327 & 329 - *Delimitation* - *Delimitation Commission after inviting suggestions, objections and after conducting public hearings included Mhow in Dhar parliamentary constituency instead of Indore parliamentary constituency - Held - Once the order made by Commission is published in Gazette of India, it has the force of law and cannot be called in question in any Court.* [Association of the Resident of Mhow v. Delimitation Commission of India] ...2809

Dowry Prohibition Act, (28 of 1961), Section 4 r/w Section 6 - See - *Criminal Procedure Code, 1973, Sections 177, 178, 179* [Neeraj Rathore v. Smt. Pramodin Rathore] ...2734

Election Rules, 1968, Rule 31 - *Wrong mentioning of serial number in ballot paper - Petitioner contested the election for the post of member, Bar Council of M.P. - Serial number of appellant was wrongly mentioned in column 5 although it was correctly mentioned in ballot paper - Petitioner challenged the election process after more than a month of voting - Held - When name of a person is mentioned in ballot paper and everybody knows that he is contesting election, wrong mention of serial number would not amount to rejection of nomination paper - Voters are Law Graduates, therefore, misprint in column No.5 was not likely to mislead the literate voters - Appeal dismissed.* [Aniruddh Pandey v. Advocate General] ...2532

Electricity Supply Code, M.P. 2004 (As amended w.e.f. 11.08.2006), Clause 4.17 - *Effect of amendment in Rules* - *Petitioner purchased premises in auction - The presmises carried a liability of electricity charges of Rs.46084/- - Petitioner requested for grant of fresh electricity connection relying upon Clause 4.17 of Code - Respondents declined to grant connection - Action challenged - Respondents contended that substitution of clause 4.17 in the Code has been brought into existence w.e.f. 11.08.2006 whereas the application for grant of new connection was prior to the amendment and is governed by unamended clause - Held - When a statute provides new remedies for enforcement of existing rights will apply to future as well as past causes of action, because they do not affect existing rights and are classified as procedural.* [Uma Shukla (Smt.) v. M.P. Poorva Kshetra Vidyut Vitran Co.]...2915

Electricity Supply Code, M.P. 2004 (As amended w.e.f. 11.08.2006), Clause 4.17 - *New electricity connection denied on the ground that electricity dues of the previous owner were outstanding - Held - The new electricity connection cannot be denied on the anvil that previous consumer did not*

आपत्तियाँ आमंत्रित करने और एक या अधिक लोक बैठकें आयोजित करने की आवश्यकता नही थी – याचिका खारिज। (एसोसिएशन ऑफ द रेसीडेन्ट ऑफ महू वि. डीलिमिटेशन कमीशन ऑफ इंडिया) ...2809

परिसीमन अधिनियम (2002 का 33), धारा 9 व 10(1), संविधान, अनुच्छेद 327, 329 – परिसीमन – परिसीमन आयोग ने सुझाव, आपत्तियाँ आमंत्रित करने और लोक सुनवाई करने के बाद महू को इन्दौर संसदीय निर्वाचन क्षेत्र के स्थान पर धार संसदीय निर्वाचन क्षेत्र में सम्मिलित किया – अभिनिर्धारित – एक बार आयोग द्वारा किया गया आदेश भारत के राजपत्र में प्रकाशित हो जाता है तो वह क़ानून का प्रभाव रखता है किसी न्यायालय में प्रश्न में नही बुलाया जा सकता। (एसोसिएशन ऑफ द रेसीडेन्ट ऑफ महू वि. डीलिमिटेशन कमीशन ऑफ इंडिया) ...2809

दहेज प्रतिषेध अधिनियम, (1961 का 28), धारा 4 सहपठित धारा 6 – देखें – दण्ड प्रक्रिया संहिता, 1973, धाराएँ 177, 178, 179 (नीरज राठौर वि. श्रीमति प्रमोदिन राठौर) ...2734

निर्वाचन नियम, 1968, नियम 31 – मतपत्र में सरल क्रमांक का गलत उल्लेख – याची ने म.प्र. राज्य अधिवक्ता परिषद के सदस्य के पद हेतु चुनाव लड़ा – क्रमांक कॉलम 5 में अपीलार्थी का सरल क्रमांक गलत रूप से उल्लिखित था यद्यपि यह मतपत्र में सही रूप से उल्लिखित था – याची ने निर्वाचन प्रक्रिया को मतदान के एक माह से अधिक समय पश्चात् चुनौती दी – अभिनिर्धारित – जब एक व्यक्ति का नाम मतपत्र में उल्लिखित हो और प्रत्येक व्यक्ति यह जानता हो कि वह चुनाव लड़ रहा है, सरल क्रमांक का गलत उल्लेख नामांकन पत्र को निरस्त करने की कोटि में नही आयेगा – मतदाता विधि स्नातक हैं, इसलिए कॉलम क्र. 5 में छपाई की गलती शिक्षित मतदाताओं को भुलावे में डालने वाली नही थी – अपील खारिज। (अनिरूद्ध पांडे वि. एडवोकेट जनरल) 2532

विद्युत प्रदाय संहिता, म.प्र. 2004 (11.08.2006 से यथासंशोधित), खण्ड 4.17 – नियमों में संशोधन का प्रभाव – याची ने परिसर नीलामी में क्रय की – परिसर पर 46084/– रुपये विद्युत प्रभार का दायित्व था – याची ने संहिता के खण्ड 4.17 पर निर्भर करते हुए नवीन विद्युत कनेक्शन देने के लिए प्रार्थना की – प्रत्यर्थियों ने कनेक्शन देने से इंकार किया – कृत्य को चुनौती दी गई – प्रत्यर्थियों ने प्रतिवाद किया कि संहिता में खण्ड 4.17 का प्रतिस्थापन 11.08.2006 से अस्तित्व में लाया गया है जबकि नवीन कनेक्शन देने का आवेदन संशोधन के पूर्व का था और असंशोधित खण्ड से शासित होता है – अभिनिर्धारित – जब कोई अधिनियमिति विद्यमान अधिकारों के प्रवर्तन के लिए कोई नया अनुतोष उपबंधित करती है, भविष्यवर्ती और पूर्ववर्ती वाद हेतुकों को भी लागू होगी, क्योंकि वे विद्यमान अधिकारों को प्रभावित नही करते और प्रक्रियात्मक रूप से वर्गीकृत किये जाते हैं। (उमा शुक्ला (श्रीमति) वि. म.प्र. पूर्व क्षेत्र विद्युत वितरण कम्पनी) ...2915

विद्युत प्रदाय संहिता, म.प्र. 2004 (11.08.2006 से यथासंशोधित), खण्ड 4.17 – नवीन विद्युत कनेक्शन देने से इस आधार पर इंकार किया गया कि पूर्ववर्ती स्वामी के विद्युत देय बकाया थे – अभिनिर्धारित – नवीन विद्युत कनेक्शन इस आधार पर इंकार नही किया जा सकता कि

clear the electricity dues - Petition allowed. [Uma Shukla (Smt.) v. M.P. Poorva Kshetra Vidyut Vitran Co.] ...2915

Employees Regulation, 1950, Regulations 31 & 31-C - See - *Employees' State Insurance Act, 1948, Sections 39, 40, 75, 82, 85-B* [Employees' State Insurance Corporation v. M/s. Reliable Carriers Private Ltd.] ...2973

Employees' State Insurance Act (34 of 1948), Sections 2(8) & 51A - *Whether death arising out of and in course of employment - Employee was a driver - After coming back from service he felt difficulty in breathing, after some rest proceeded to home but on the way fell down on the road and died - Statement of doctor indicates death due to Cardio-respiratory failure - Doctor has deposed that such Cardio-respiratory failure may be possible in exceptional circumstances due to stress or strain - No evidence regarding exceptional circumstances causing stress - Held - Presumption of accident arising in course of insured person's employment can not be drawn - Dependents failed to prove employment injury out of or in course of employment - Not entitled to get benefit of ESI - Judgment passed by Labour Court set-aside - Appeal allowed.* [Employees State Insurance Corporation v. Jameela Bi] ...3218

Employees' State Insurance Act (34 of 1948), Sections 39, 40, 75, 82, 85-B, Employees Regulation, 1950, Regulations 31 & 31-C - *Damages* - *Employer not deposited the contribution within prescribed period - E.S.I. Corporation imposing damages to the extent of 100% of the contribution after giving an opportunity of hearing -E.S.I. cum Labour Court reducing it to 25% - Order challenged before High Court - Held - Amount of contribution was deposited by employer after 4 to 7 years delay from the due dates of such payment - Notice was served in spite it was not replied on behalf of employer - E.S.I. Corporation's order imposing the damages was passed in consonance of Section 85-B of Act r/w Regulations 31 & 31-C - The case of employer was also not covered any of the proviso or exception - E.S.I. cum Labour Court has committed grave error in setting-aside the order passed by E.S.I. Corporation for imposing the 100% damages - Appeal allowed.* [Employees' State Insurance Corporation v. M/s. Reliable Carriers Private Ltd.] ...2973

Evidence Act (1 of 1872) - ***Accomplice*** - *The law has developed that the corroboration of the evidence of an accomplice is a rule of prudence.* [Navkant Sharma v. State of M.P.] ...2425

Evidence Act (1 of 1872), Section 3 - ***Benefit to the accused*** - *It is clear that on the basis of evidence two views of the story appears to be probable hence, one view that was contended by the accused and favourable to the accused be accepted.* [Chhota @ Chhotelal v. State of M.P.] ...3019

Evidence Act (1 of 1872), Section 3 - *It is settled principle of law that if authentic date of birth of the prosecutrix that is to say, evidence in respect*

पूर्ववर्ती उपभोक्ता ने विद्युत देय चुकता नही किये – याचिका मंजूर। (उमा शुक्ला (श्रीमति) वि. म.प्र. पूर्व क्षेत्र विद्युत वितरण कम्पनी) ...2915

कर्मचारी विनियमन, 1950, विनियम 31 व 31–सी – देखें – कर्मचारी राज्य बीमा अधिनियम 1948, धाराएँ 39, 40, 75, 82, 85–बी (एम्पलाईस स्टेट इंश्योरेंस कारपोरेशन वि. मे. रिलायबल केरियर्स प्रा.लि.) ...2973

कर्मचारी राज्य बीमा अधिनियम (1948 का 34), धाराएँ 2(8) व 51ए – क्या मृत्यु नियोजन से और नियोजन के अनुक्रम में हुई – कर्मचारी एक चालक था – सेवा से वापस आने के बाद उसे सांस लेने में तकलीफ हुई, थोड़ा आराम लेने के बाद उसने घर की ओर प्रस्थान किया किन्तु रास्ते में ही सड़क पर गिर पड़ा एवं मृत्यु हो गयी – चिकित्सक का कथन दर्शाता है कि मृत्यु कार्डियो–रेस्पाइरेटरी फेलुअर के कारण हुई – चिकित्सक ने बयान दिया कि ऐसा कार्डियो–रेस्पाइरेटरी फेलुअर आपवादिक परिस्थितियों में दबाव या तनाव के कारण भी संभव है – दवाब कारित करने वाली आपवादिक परिस्थितियों के सम्बन्ध में कोई साक्ष्य नही – अभिनिर्धारित – बीमाकृत व्यक्ति के नियोजन के अनुक्रम में दुर्घटना होने की उपधारणा नही की जा सकती – आश्रित नियोजन से या नियोजन के अनुक्रम में नियोजन क्षति होना साबित करने में असफल रहे – कर्मचारी राज्य बीमा का लाभ पाने के हकदार नही – श्रम न्यायालय द्वारा पारित निर्णय अपास्त – अपील मंजूर। (एम्पलाईस स्टेट इंश्योरेंस कारपोरेशन वि. जमीला बी) ...3218

कर्मचारी राज्य बीमा अधिनियम (1948 का 34), धाराएँ 39, 40, 75, 82, 85–बी, कर्मचारी विनियमन, 1950, विनियम 31 व 31–सी – नुकसानी – नियोक्ता ने अंशदान विहित कालावधि में जमा नही किया – कर्मचारी राज्य बीमा निगम ने सुनवाई का अवसर देने के बाद अंशदान की 100 प्रतिशत नुकसानी अधिरोपित की – कर्मचारी राज्य बीमा सहं श्रम न्यायालय ने इसे कम करते हुए 25 प्रतिशत किया – आदेश को उच्च न्यायालय के समक्ष चुनौती दी गई – अभिनिर्धारित – अंशदान की राशि नियोक्ता द्वारा निर्धारित तारीख से 4 से 7 वर्ष विलम्ब से जमा की गई – सूचनापत्र तामील करने के बावजूद नियोक्ता की ओर से उसका जवाब नही दिया गया – कर्मचारी राज्य बीमा निगम का नुकसानी अधिरोपित करने का आदेश अधिनियम की धारा 85–बी सहपठित विनियम 31 व 31–सी के अनुरूप पारित किया गया था – नियोक्ता का मामला किसी परन्तुक या अपवाद के अन्तर्गत भी नही था – कर्मचारी राज्य बीमा सहं श्रम न्यायालय ने कर्मचारी राज्य बीमा निगम द्वारा 100 प्रतिशत नुकसानी अधिरोपित करने के लिए पारित आदेश को अपास्त करने में गम्भीर त्रुटि की – अपील मंजूर। (एम्पलाईस स्टेट इंश्योरेंस कारपोरेशन वि. मे. रिलायबल केरियर्स प्रा.लि.) ...2973

साक्ष्य अधिनियम (1872 का 1) – सह–अपराधी – यह विधि विकसित की गई है कि सह–अपराधी की साक्ष्य की सम्पुष्टि प्रज्ञा का नियम है। (नवकांत शर्मा वि. म.प्र. राज्य) ...2425

साक्ष्य अधिनियम (1872 का 1), धारा 3 – अभियुक्त को लाभ – यह स्पष्ट है कि साक्ष्य के आधार पर कहानी के दो दृष्टिकोण संभाव्य प्रतीत होते हैं इसलिए एक दृष्टिकोण जो अभियुक्त द्वारा प्रतिवादित किया गया और अभियुक्त के लिए अनुकूल था स्वीकार किया गया। (छोटा उर्फ छोटे लाल वि. म.प्र. राज्य) ...3019

साक्ष्य अधिनियम (1872 का 1), धारा 3 – विधि का यह स्थापित सिद्धांत है कि यदि अभियोक्त्री की प्रमाणिक जन्मतिथि अर्थात् अभियोक्त्री की आयु के सम्बन्ध में साक्ष्य उपलब्ध हो तब

of age of prosecutrix is available then opinion of doctor on the basis of ossification test can be discarded. [Vinod Kumar v. State of M.P.] ...3327

Evidence Act (1 of 1872), Section 3, Penal Code, 1860, Section 326, *Maxim falsus in uno, falsus in omnibus - Applicability - Held - The maxim is not acceptable as a sound principle in our country - A person can be disbelieved on a particular part of his statement may not be disbelieved for rest of his statement - The Court is required to separate the grain from the chaff instead of rejecting whole statement - Conviction can be based on such statement.* [Ashok v. State of M.P.] ...*71

Evidence Act (1 of 1872), Section 3 - *Reliability of hostile witness* - *The evidence of a hostile witness cannot be treated as effaced or washed off from the record altogether, but the same can be accepted to the extent the version of such witness is found to be dependable on a careful scrutiny thereof.* [Ramsiya v. State of M.P.] ...3010

Evidence Act, (1 of 1872), Section 3 - See - *Criminal Procedure Code, 1973, Sections 161 & 162* [Narayan v. State of M.P.] ...2401

Evidence Act, (1 of 1872), Section 3 - See - *Penal Code, 1860, Section 302* [Madan Singh v. State of M.P.] ...3299

Evidence Act, (1 of 1872), Section 3 - See - *Penal Code 1860, Section 376,* [Annu @ Anoop Kumar v. State of M.P.] ...2435

Evidence Act, (1 of 1872), Section 3 - See - *Penal Code, 1860, Section 376* [Suresh v. State of M.P.] ...3324

Evidence Act (1 of 1872), Section 3 - *Tutored witnesses* - *When tutoring or reading over the police statement is admitted by witnesses - Denial of giving statement on the basis of tutoring, is of no consequence - Trial court wrongly discarded admission of tutoring.* [Nathu v. State of M.P.] ...2682

Evidence Act (1 of 1872), Section 8, Penal Code, 1860, Sections 498-A, 306 - *Cruelty* - *Letters written by deceased to her brother - A bare reading of these letters would reveal that deceased had been persistently subjected to physical & mental torture during the corresponding period - Last letter that appears to have been written a few days before the incident in question, the appellant was referred to as a Neech (mean) and Gira Hua (degraded) person whereas in earlier letter she had expressed intention to commit suicide - Genuineness of none of these letters was challenged specifically by the appellant at any stage of trial - Cruelty proved.* [Prahlad Tanwani v. State of M.P.] ...3284

Evidence Act (1 of 1872), Section 9, Criminal Procedure Code, 1973, Sections 162 - *Test identification parade* - *Test identification parade conducted by police officer is not admissible in evidence - Any statement made by identifying witness to the police officers during investigation would*

चिकित्सक द्वारा ऑसीफिकेशन टेस्ट के आधार पर दी गयी राय अमान्य की जा सकती है। (विनोद कुमार वि. म.प्र. राज्य) ...3327

साक्ष्य अधिनियम (1872 का 1), धारा 3, दण्ड संहिता, 1860, धारा 326, सूत्र फेल्सस इन यूनो, फेल्सस इन ओम्नीबस (एक बात में मिथ्या तो सब में मिथ्या) – प्रयोज्यता – अभिनिर्धारित – सूत्र हमारे देश में एक दृढ़ सिद्धांत के रूप में स्वीकार्य नहीं है – एक व्यक्ति जिसके कथन के किसी विशिष्ट भाग पर अविश्वास किया जाए तो भी ऐसा हो सकता है कि उसके कथन के शेष भाग पर अविश्वास न किया जाए – न्यायालय से अपेक्षित है कि सम्पूर्ण कथन को निरस्त करने के स्थान पर भूसी से अनाज को अलग करे – ऐसे कथन पर दोषसिद्धि आधारित की जा सकती है। (अशोक वि. म.प्र. राज्य) ---*71

साक्ष्य अधिनियम (1872 का 1), धारा 3 – पक्षद्रोही साक्षी की विश्वसनीयता – पक्षद्रोही साक्षी का साक्ष्य अभिलेख से पूरी तरह मिट गया या विलुप्त हो गया ऐसा नही माना जा सकता, बल्कि वह उस सीमा तक स्वीकार किया जा सकता है जितना सावधानीपूर्वक जाँच करने पर ऐसे साक्षी का बयान विश्वसनीय पाया जाए। (रामसिया वि. म.प्र. राज्य) ...3010

साक्ष्य अधिनियम, (1872 का 1), धारा 3 – देखें –दण्ड प्रक्रिया संहिता, 1973, धारा 161 व 162 (नारायण वि. म.प्र. राज्य) ...2401

साक्ष्य अधिनियम, (1872 का 1), धारा 3 – देखें – दण्ड संहिता, 1860, धारा 302 (मदन सिंह वि म.प्र. राज्य) ...3299

साक्ष्य अधिनियम, (1872 का 1), धारा 3 – देखें –दण्ड संहिता 1860, धारा 376 (अन्नू उर्फ अनूप कुमार वि. म.प्र. राज्य) ...2435

साक्ष्य अधिनियम, (1872 का 1), धारा 3 – देखें – दण्ड संहिता, 1860, धारा 376, (सुरेश वि. म.प्र. राज्य) ...3324

साक्ष्य अधिनियम (1872 का 1), धारा 3 – सिखाये–पढ़ाये साक्षी – जब साक्षियों द्वारा सिखाया–पढ़ाया जाना या पुलिस कथन पढ़ा जाना स्वीकार किया जाता है – सिखाये–पढ़ाये जाने के आधार पर कथन देने से इंकारी का कोई परिणाम नही है – विचारण न्यायालय ने सिखाये–पढ़ाये जाने की स्वीकृति गलत ढंग से अमान्य की। (नाथू वि. म.प्र. राज्य) ...2682

साक्ष्य अधिनियम (1872 का 1), धारा 8, दण्ड संहिता, 1860, धाराएँ 498–ए, 306 – क्रूरता – मृतक द्वारा अपने भाई को पत्र लिखे गये – इन पत्रों को पढ़ने से ही यह प्रकट होता है कि मृतक को तत्सम्बंधी कालावधि के दौरान बार–बार शारीरिक और मानसिक यातना दी गई – अंतिम पत्र जो घटना के कुछ दिन पूर्व ही लिखा जाना प्रतीत होता है, में अपीलार्थी को नीच और गिरा हुआ व्यक्ति संदर्भित किया गया जबकि पूर्व के पत्र में उसने आत्महत्या करने का इरादा प्रकट किया था – इन पत्रों में से किसी की प्रमाणिकता को विशिष्ट रूप से अपीलार्थी द्वारा विचारण के किसी भी प्रक्रम पर चुनौती नही दी गई – क्रूरता साबित। (प्रहलाद तनवानी वि. म.प्र. राज्य) ...3284

साक्ष्य अधिनियम (1872 का 1), धारा 9, दण्ड प्रक्रिया संहिता, 1973, धारा 162 – शनाख्त परेड – पुलिस अधिकारी द्वारा करवाई गई शनाख्त परेड साक्ष्य में ग्राह्य नही है – शनाख्त करने वाले किसी साक्षी द्वारा अनुसंधान के दौरान पुलिस अधिकारियों को दिया गया कोई

be hit by Section 162 of Code and will not be admissible in evidence - Identification parade of the accused was to be conducted by some magistrate. [State of M.P. v. Tidda @ Sonu] ...*90

Evidence Act (1 of 1872), Section 9, Penal Code, 1860, Section 307 - *Identification* - *Complainant and all the three eye witnesses admitted that accused was not known to them before the incident - Accused was shown to them in police station - I.O.'s explanation that accused person were arrested in the presence of complainant and witnesses because of which test identification parade was not held - This statement is not corroborated by any eye witness - Therefore, dock identification of the accused is not sufficient to establish identity of the accused.* [Nathu v. State of M.P.] ...2682

Evidence Act (1 of 1872), Section 9, Penal Code, 1860, Sections 395 & 397 - *Test identification parade - Dacoity - Identification parade after more than 2 month of incident - No evidence lead by prosecution that after arrest till holding of identification parade, investigating agency observed requisite precautions to hide identity of accused - Witnesses did not disclose personality, description and special feature of accused in F.I.R. - Held - Evidence of solitary witness can not be relied upon for fixing the identity of accused - Appellants acquitted - Appeal allowed.* [Mahendrasingh v. State of M.P.] ...2989

Evidence Act (1 of 1872); Section 9, Penal Code, 1860, Sections 395 & 397 - *Test identification of articles - Dacoity - Recovery of articles from appellants - Cash without any specific mark of identification seized from appellants - No evidence adduced that other seized articles purchased from looted cash - Held - Prosecution failed to prove its case beyond all reasonable doubts against appellants - Appellants acquitted - Appeal allowed.* [Mahendrasingh v. State of M.P.] ...2989

Evidence Act (1 of 1872), Section 32(1), Penal Code, 1860, Section 306 - *Law is well settled on the point that even in a case of suicide, letters written by the deceased which are directly connected with or related to death in question would fall within four corners of Section 32 of the Act - Letters written by the deceased to her elder brother were rightly admitted in evidence as statements relating to circumstances culminating into her death.* [Prahlad Tanwani v. State of M.P.] ...3284

Evidence Act (1 of 1872), Section 32 - See -*Penal Code 1860, Section 302* [Avinash @ Gudda v. State of M.P.] ...2431

Evidence Act, (1 of 1872), Section 32 - See -*Penal Code, 1860, Section 302* [Raju @ Rajendra Singh v. State of M.P.] ...3015

Evidence Act (1 of 1872), Sections 35, 62, 63 & 65 - *Birth and Death Register* - *Witness bringing original birth and death register maintained at police station regularly and proved entry regarding date of birth of prosecutrix*

कथन संहिता की धारा 162 के विरुद्ध होगा और साक्ष्य में ग्राह्य नही होगा – अभियुक्त की शनाख्त परेड मजिस्ट्रेट द्वारा करवाई जानी थी। (म.प्र. राज्य वि. टिड्डा उर्फ सोनू) ---*90

साक्ष्य अधिनियम (1872 का 1), धारा 9, दण्ड संहिता, 1860, धारा 307 – शिनाख्तगी – परिवादी और सभी तीनों प्रत्यक्षदर्शी साक्षियों ने स्वीकार किया कि अभियुक्त को घटना के पहले से वे नही जानते थे – उन्हें पुलिस थाने में अभियुक्त को दिखा दिया था – अनुसंधान अधिकारी का स्पष्टीकरण कि अभियुक्तों को परिवादी और साक्षियों की उपस्थिति में गिरतार किया इसलिए टेस्ट शिनाख्त परेड नही करवाई – इस कथन की पुष्टि किसी प्रत्यक्षदर्शी साक्षी ने नही की – इसलिए कठघरे में अभियुक्त की शिनाख्तगी, अभियुक्त की पहचान स्थापित करने के लिए पर्याप्त नही है। (नाथू वि. म.प्र. राज्य) ...2682

साक्ष्य अधिनियम (1872 का 1), धारा 9, दण्ड संहिता, 1860, धाराएँ 395 व 397 – शनाख्त परेड – डकैती – शनाख्त परेड घटना के दो माह पश्चात् – अभियोजन द्वारा कोई साक्ष्य पेश नही की गई कि गिरतारी के पश्चात् शनाख्त परेड करने तक अनुसंधानकर्ता ने अभियुक्त की पहचान छुपाने के लिए आवश्यक सावधानियों का पालन किया – साक्षियों ने एफ.आई.आर. में अभियुक्त का व्यक्तित्व, वर्णन और विशिष्ट लक्षण प्रकट नही किये – अभिनिर्धारित – अभियुक्त की पहचान तय करने के लिए एकमात्र साक्षी की साक्ष्य पर विश्वास नही किया जा सकता – अपीलार्थी दोषमुक्त – अपील मंजूर। (महेन्द्रसिंह वि. म.प्र. राज्य) ...2989

साक्ष्य अधिनियम (1872 का 1), धारा 9, दण्ड संहिता, 1860, धाराएँ 395 व 397 – वस्तुओं की शनाख्त – डकैती – अपीलार्थियों से वस्तुओं की बरामदगी – पहचान के किसी विनिर्दिष्ट चिन्ह के बिना नगदी अपीलार्थियों से अभिग्रहीत की गई – कोई साक्ष्य पेश नही कि अन्य अभिग्रहीत वस्तुऐं लूटी गई नगदी से क्रय की गई – अभिनिर्धारित – अभियोजन अपीलार्थियों के विरुद्ध मामला सभी युक्तियुक्त संदेह से परे साबित करने में असफल हुआ – अपीलार्थियों को दोषमुक्त किया गया – अपील मंजूर। (महेन्द्रसिंह वि. म.प्र. राज्य) ...2989

साक्ष्य अधिनियम (1872 का 1), धारा 32(1), दण्ड संहिता, 1860, धारा 306 – इस बिन्दु पर विधि सुस्थापित है कि आत्महत्या के मामले में भी, मृतक द्वारा लिखे गये पत्र, जो प्रत्यक्षतः प्रश्नगत मृत्यु से सम्बद्ध या सम्बन्धित हैं, अधिनियम की धारा 32 की परिधि में आयेंगे – मृतक द्वारा अपने बड़े भाई को लिखे गये पत्र, उसकी मृत्यु की परिस्थितियों की चरम सीमा से सम्बन्धित कथनों के रूप में साक्ष्य में उचित रूप से ग्रहण किये गये। (प्रहलाद तनवानी वि. म.प्र. राज्य) ...3284

साक्ष्य अधिनियम, (1872 का 1), धारा 32 – देखें –दण्ड संहिता (1860 का 45), धारा 302 (अविनाश उर्फ गुड्डा वि. म.प्र. राज्य) ...2431

साक्ष्य अधिनियम (1872 का 1), धारा 32 – देखें – दण्ड संहिता, 1860, धारा 302 (राजू उर्फ राजेन्द्रसिंह वि. म.प्र. राज्य) ...3015

साक्ष्य अधिनियम (1872 का 1), धाराएँ 35, 62, 63 व 65 – जन्म और मृत्यु रजिस्टर – साक्षी पुलिस थाने पर नियमिति रूप से कायम रखे गये जन्म और मृत्यु रजिस्टर को लाया और अभियोक्त्री की जन्मतिथि सम्बन्धी प्रविष्टि साबित की – अभिनिर्धारित – जन्म और मृत्यु

- Held - Death and birth register regularly maintained at police station - Entries are made on the basis of Kotwari book - Entry in original register was made in 1975 by a public servant - Entry made in register by public servant in discharge of his official duty in respect of relevant fact is primary evidence - Original register cannot be treated as secondary evidence. [Viond Kumar v. State of M.P.] ...3327

Evidence Act (1 of 1872), Sections 40, 41, 43 - *Relevancy of previous Order, Judgment, Decree in a litigation - Held - As per Section 40 of the Act a previous judgment is relevant if it creates a bar for second suit such as res judicata - As per Section 41 previous judgment in a suit for probate, matrimonial, admiralty or insolvency can be relevant for subsequent suit - As per Section 42 previous judgment is relevant in a subsequent suit if previous judgment is of public nature - As per Section 43 previous judgment is relevant in a subsequent suit if previous judgment is a fact in issue - Appeal dismissed.* [Kallu v. Antulal] ...2381

Evidence Act (1 of 1872), Section 63(2) - *Whether conviction can be based on secondary evidence (photocopy of original complementary pass) to hold that the original pass was forged - Held - Yes, as original complementary pass is being in possession of the applicant (accused) and complementary pass was handed over by the applicant himself to the conductor who got the photocopy made.* [Pramod v. State of M.P.] ...2466

Evidence Act (1 of 1872), Section 91 - *Exclusion of oral evidence - Held - Once it is proved that the appellant signed the agreement of sale after reducing the same in writing then as per provision of Section 91 of the Act - Oral evidence led by appellant contrary to the terms of such agreement cannot be considered as admissible evidence.* [Shivcharan v. Mohanlal] ...3183

Evidence Act (1 of 1872), Section 102 - *Mother & sister of deceased filed suit to recover debt due to deceased against debtor/defendant - Defendant came with the case that no transaction between the parties and cheque was issued in security for debt given to one Narayan - Defendant failed to discharge burden to prove that there was no liability - Held - Trial court rightly granted decree - Appeal dismissed.* [Manak Chand Jain v. Pukhraj Bai (Smt.)] ...2619

Evidence Act, (1 of 1872), Section 102 - See - *Motor Vehicles Act 1988, Section 166* [National Insurance Company Ltd. v. Smt. Setubai] ...2367

Evidence Act (1 of 1872), Section 104 - *Medical negligence - Burden of proof - Burden to prove that in what circumstances appellants lost their mother was on the respondents - As the deceased was 30 years only and before two days of her death she delivered a healthy baby - Even if deceased was also willing for T.T. operation then it could not have been permitted in absence of anaesthetist - Mody's Medical Jurisprudence lays down that in*

रजिस्टर पुलिस थाने पर नियमित रूप से कायम रखा गया – प्रविष्टियाँ कोटवारी पुस्तक के आधार पर की जाती हैं – मूल रजिस्टर में प्रविष्टि लोक सेवक द्वारा 1975 में की गई – लोक सेवक द्वारा अपने कार्यालयीन कर्तव्य के निर्वहन में रजिस्टर में की गई प्रविष्टि सुसंगत तथ्य के बारे में प्राथमिक साक्ष्य है – मूल रजिस्टर को द्वितीयक साक्ष्य नही माना जा सकता। (विनोद कुमार वि. म.प्र. राज्य) ...3327

साक्ष्य अधिनियम (1872 का 1), धाराएँ 40, 41, 43 – किसी वाद में पूर्वतन आदेश, निर्णय, डिक्री की सुसंगतता – अभिनिर्धारित – अधिनियम की धारा 40 के अनुसार पूर्वतन निर्णय सुसंगत है यदि वह द्वितीय वाद का वर्जन करता है जैसे पूर्व–न्याय – धारा 41 के अनुसार प्रोबेट, वैवाहिक, नावाधिकरण या दिवाला विषयक किसी वाद में पूर्वतन निर्णय पश्चात्वर्ती वाद के लिए सुसंगत हो सकता है – धारा 42 के अनुसार पूर्वतन निर्णय पश्चात्वर्ती वाद में सुसंगत है यदि पूर्वतन निर्णय लोक प्रकृति का है – धारा 43 के अनुसार पूर्वतन निर्णय पश्चात्वर्ती वाद में सुसंगत है यदि पूर्वतन निर्णय एक विवाद्यक तथ्य है – अपील खारिज। (कल्लू वि. अंतूलाल) ...2381

साक्ष्य अधिनियम (1872 का 1), धारा 63(2) – क्या द्वितीयक साक्ष्य (मूल कम्पलीमेंटरी पास की फोटो प्रति) पर, यह अभिनिर्धारित करते हुए कि मूल पास कूटरचित था, दोषसिद्धि आधारित की जा सकती है – अभिनिर्धारित – हाँ, चूंकि मूल कम्पलीमेंटरी पास आवेदक (अभियुक्त) के कब्जे में है और कम्पलीमेंटरी पास स्वयं आवेदक द्वारा कंडक्टर को दिया गया जिसने फोटो प्रति तैयार करवायी। (प्रमोद वि. म.प्र. राज्य) ...2466

साक्ष्य अधिनियम (1872 का 1), धारा 91 – मौखिक साक्ष्य का अपवर्जन – अभिनिर्धारित – जब एक बार यह सिद्ध हो जाता है कि अपीलार्थी ने विक्रय का अनुबन्ध लिखने के बाद उस पर हस्ताक्षर किये तब अधिनियम की धारा 91 के उपबंध के अनुसार – अपीलार्थी द्वारा ऐसे अनुबन्ध के निबंधनों के विपरीत दी गई मौखिक साक्ष्य ग्राह्य साक्ष्य के रूप में विचार में नही ली जा सकती। (शिवचरण वि. मोहन लाल) ...3183

साक्ष्य अधिनियम (1872 का 1), धारा 102 – मृतक की माँ और बहन ने मृतक को शोध्य ऋण की वसूली के लिए ऋणी/प्रतिवादी के विरुद्ध वाद पेश किया – प्रतिवादी का मामला यह है कि पक्षकारों के मध्य कोई संव्यवहार नही और चेंक किसी नारायण को दिये गये ऋण की प्रतिभूति के लिए जारी किया गया था – प्रतिवादी यह साबित करने के भार को उन्मोचित करने में असफल रहा कि कोई दायित्व नही था – अभिनिर्धारित – विचारण न्यायालय ने डिक्री ठीक प्रकार से प्रदान की – अपील खारिज। (मानक चंद जैन वि. पुखराज बाई (श्रीमति)) ...2619

साक्ष्य अधिनियम, (1872 का 1), धारा 102 – देखें –मोटर यान अधिनियम, 1988, धारा 166 (नेशनल इंश्योरेंस कंपनी लि. वि. श्रीमति सेतु बाई) ...2367

साक्ष्य अधिनियम (1872 का 1), धारा 104 – चिकित्सकीय उपेक्षा – सबूत का भार – यह साबित करने का भार कि किन परिस्थितियों में अपीलार्थियों ने अपनी माता को खोया, प्रत्यर्थियों पर था – चूंकि मृतक केवल 30 वर्ष की थी और मृत्यु के दो दिन पूर्व उसने एक स्वस्थ शिशु को जन्म दिया – यदि मृतक टी.टी. शल्यक्रिया के लिए इच्छुक थी, तो भी निश्चेतना विशेषज्ञ की अनुपस्थिति में इसकी अनुमति नही दी जा सकती थी – मोदी का विधिशास्त्र अधिकथित करता है कि निश्चेतना

case of death from anaesthesia, the surgeon or anaethetist should at once report the matter to police to hold a public enquiry - No report was lodged by the respondents and dead body was not sent for postmortem report - Medical negligence proved. [Bharti (Ku.) v. State of M.P.] ...2935

Evidence Act (1 of 1872), Section 105 - See - *Penal Code, 1860, Section 84,* [Hari Singh Gond v. State of M.P.] SC ...2764

Evidence Act (1 of 1872), Section 106 - *Burden of Proof* - *Circumstantial Evidence - When death has taken place in the house, it is necessary for husband to explain the circumstances how the death took place.* [Sanjay Vishwakarma v. State of M.P.] ...2693

Evidence Act, (1 of 1872), Section 106 - See - *Penal Code, 1860, Section 302* [Bihari v. State of M.P.] ...2666

Evidence Act (1 of 1872), Section 114(g) - ***Adverse inference - Non-examination of I.O. -*** *First information report was lodged in the presence of appellant Chatra and a case u/s 366, 392, 376 r/w 34 IPC was registered - Appellant was available and the F.I.R. was disclosing a cognizable and non-bailable offence against him - Appellant was not arrested then and there - This circumstance could be explained by I.O./S.H.O. - But, was not examined by prosecution - Appellant was deprived of his right of cross-examination on this important aspect - Court constrained to draw adverse inference against the prosecution.* [Chatra v. State of M.P.] ...2674

Evidence Act (1 of 1872), Section 114(g) - ***Adverse inference -Non-examination of material witness -*** *Prosecutrix and appellant Chatra found sitting on a cot in his house - Chhotu, relative of prosecutrix along with brother of prosecutrix entered into the house and they have beaten prosecutrix & appellant both - Chhotu and brother of prosecutrix both were facing prosecution which was instituted on the basis of report lodged by appellant - Chhotu was a material witness - On examination of the witness, unfavourable evidence to the prosecution would have come on record - Therefore, deliberately withheld by the prosecution - Adverse inference should be drawn.* [Chatra v. State of M.P.] ...2674

Evidence Act, (1 of 1872), Section 114 Illustration (f) - See - *Negotiable Instruments Act, 1881, Section 138* [Mujaffar Hussain Mansoori v. Devendra Trivedi] ...2687

Evidence Act (1 of 1872), Section 157 - *The evidence of such witnesses to whom the incident is narrated soon after the incident, is admissible as corroborative evidence u/s 157 of the Act.* [Ramsiya v. State of M.P.]...3010

Explosive Substances Act (6 of 1908), Section 3 - *Appellant was convicted for all of sudden hurled a country made bomb at his father - Bomb ultimately landed on a wall - Explosion resulted into injuries in father's*

से मृत्यु की दशा में शल्यचिकित्सक या निश्चेतना विशेषज्ञ को लोक जाँच करने के लिए तुरन्त मामले की रिपोर्ट पुलिस को करनी चाहिए – प्रत्यर्थियों द्वारा कोई रिपोर्ट दर्ज नही कराई गई और मृत शरीर को शव परीक्षण रिपोर्ट के लिए नही भेजा गया – चिकित्सकीय उपेक्षा साबित। (भारती (कुमारी) वि. म.प्र. राज्य) ...2935

साक्ष्य अधिनियम (1872 का 1), धारा 105 – देखें – दण्ड संहिता, 1860, धारा 84, (हरीसिंह गोंड वि. म.प्र. राज्य) SC --- 2764

साक्ष्य अधिनियम (1872 का 1), धारा 106 – सबूत का भार – परिस्थितिजन्य साक्ष्य – जब मृत्यु घर में हुई, पति के लिए यह आवश्यक है कि परिस्थितियाँ स्पष्ट करे कि कैसे मृत्यु कारित हुई। (संजय विश्वकर्मा वि. म.प्र. राज्य) ...2693

साक्ष्य अधिनियम, (1872 का 1), धारा 106 – देखें – दण्ड संहिता, 1860, धारा 302 (बिहारी वि. म.प्र. राज्य) ...2666

साक्ष्य अधिनियम (1872 का 1), धारा 114(जी) – विपरीत अनुमान – अनुसंधान अधिकारी का परीक्षण न कराना – प्रथम सूचना रिपोर्ट अपीलार्थी चतरा की उपस्थिति में दर्ज कराई गई और भा.द.सं. की धारा 366, 392, 376 सहपठित 34 के अन्तर्गत मामला दर्ज किया गया – अपीलार्थी उपलब्ध था और एफ.आई.आर. उसके विरुद्ध संज्ञेय और गैर जमानती अपराध प्रकट कर रही थी – अपीलार्थी को वहाँ उसी समय गिरतार नही किया गया – यह परिस्थिति अनुसंधान अधिकारी/थाना प्रभारी द्वारा स्पष्ट की जा सकती थी – किन्तु अभियोजन द्वारा उनका परीक्षण नही कराया गया – अपीलार्थी इस महत्वपूर्ण पहलू पर प्रतिपरीक्षण करने के अपने अधिकार से वंचित हो गया – न्यायालय अभियोजन के विरुद्ध विपरीत अनुमान निकालने के लिए बाध्य था। (चतरा वि. म.प्र. राज्य) ...2674

साक्ष्य अधिनियम (1872 का 1), धारा 114(जी) – विपरीत अनुमान – सारवान साक्षी का परीक्षण न कराना – अभियोक्त्री और अपीलार्थी चतरा उसके घर में खाट पर बैठे थे – अभियोक्त्री के रिश्तेदार छोटू ने अभियोक्त्री के भाई के साथ घर में प्रवेश किया और उन्होंने अभियोक्त्री और अपीलार्थी को पीटा – छोटू और अभियोक्त्री का भाई अपीलार्थी द्वारा दर्ज कराई रिपोर्ट के आधार पर संस्थित अभियोजन का सामना कर रहे थे – छोटू एक सारवान साक्षी था – साक्षी के परीक्षण पर अभियोजन के प्रतिकूल साक्ष्य अभिलेख पर आती – इसलिए अभियोजन द्वारा जानबूझकर बयान नही कराये गये – विपरीत अनुमान निकाला जाना चाहिए। (चतरा वि. म.प्र. राज्य) ...2674

साक्ष्य अधिनियम, (1872 का 1), धारा 114 दृष्टांत (एफ) – देखें – परक्राम्य लिखत अधिनियम 1881, धारा 138 (मुजफर हुसैन मंसूरी वि. देवेन्द्र त्रिवेदी) ...2687

साक्ष्य अधिनियम (1872 का 1), धारा 157 – ऐसे साक्षियों का साक्ष्य, जिन्हें घटना के तत्काल बाद घटना बतायी गई हो, अधिनियम की धारा 157 के अन्तर्गत सम्पुष्टिकारक साक्ष्य के रूप में ग्राह्य है। (रामसिया वि. म.प्र. राज्य) ...3010

विस्फोटक पदार्थ अधिनियम (1908 का 6), धारा 3 – अपीलार्थी को उसके पिता पर अचानक देशी बम जोर से फेंकने के लिए दोषसिद्ध किया गया – बम अंततः एक दीवार पर गिरा – विस्फोट के परिणामस्वरूप पिता के कंधे पर क्षतियाँ आईं – दोषसिद्धि को अपील में चुनौती दी

soapular reason - Conviction challenged in appeal - Held - Evidence of parents of appellant suffered from serious infirmities about the bomb had exploded at the wall - Chemical examiner indicated presence of pellets in the remnants whereas no pellet injury was found on body of appellant's father - Forensic & medical evidence also not corroborate the prosecution version - Appellant entitled to benefit of doubt - Appeal allowed. [Ajay Kumar Notwani v. State of M.P.] ...2409

Foreign Liquor Rules, M.P. 1996, Rule 8 - *Sale of foreign liquor* - *It was argued that provision after words "or in such other manner as the State Government may direct from time to time", is only applicable for draw of lottery and not for exempting from inviting applications - Held - If one reads the latter provision of Clause 8(1)(a) after the word 'or', it would be clear that the same provides the power to the State Government to deal the subject in any other manner as the State Government may direct from time to time - These words cannot be read in isolation but they have to read in generality as they control the earlier provisions which includes the grant of licence on individual basis on fixed basic fee and licence fee by inviting the applications.* [Madan Mohan Chaturvedi v. State of M.P.] ...2776

Foreign Liquor Rules, M.P. 1996, Rule 8 - See - *Constitution, Article 19.* [Madan Mohan Chaturvedi v. State of M.P.] ...2776

Fundamental Rules, M.P., Rule 56(3) - *Compulsory Retirement* - *Petitioner working as Executive Engineer - His service record was very good and his integrity was not doubtful - But, he was compulsorily retired on the ground of pendency of D.E. and a criminal case against him - Held - Compulsory retirement is resorted to only for removing officers who have outlived their utility or have become dead wood or their continuance in service is not in public interest - Pendency of D.E. and a criminal case cannot be made a basis of compulsory retirement as it would amount to penalty - Order of compulsory retirement quashed - He would be deemed to have been in service till age of his superannuation - Also entitled for full back wages, revised pension and all consequential benefits - Petition allowed.* [S.C. Tantia v. State of M.P.] ...2594

Fundamental Rules, M.P., Rule 56(3) - *Compulsory Retirement* - *Service record of petitioner was good and under no circumstances can a prudent man come to conclusion that service record of petitioner warranted his compulsory retirement in pubic interest - Pendency of three departmental enquiries against petitioner would not warrant his compulsory retirement as pendency of D.E. have not reflected upon petitioner's performance - Compulsory retirement of petitioner on the basis of pendency of departmental enquiries per se illegal.* [Suresh Chand Pandya v. State of M.P.] ...2318

General Clauses Act, (10 of 1897), Section 3 Clause 22 - See - *Sahkari*

– अभिनिर्धारित – अपीलार्थी के माता–पिता के साक्ष्य में बम से दीवार पर विस्फोट हुआ इस बारे में गम्भीर विसंगतियाँ – रासायनिक परीक्षक ने अवशेष में छर्रों की उपस्थिति इंगित की जबकि अपीलार्थी के पिता के शरीर पर छर्रे की कोई क्षति नहीं पायी गई – न्यायालयीन (फॉरेंसिक) और चिकित्सकीय साक्ष्य भी अभियोजन की कथा की पुष्टि नहीं करते – अपीलार्थी संदेह का लाभ पाने का हकदार – अपील मंजूर। (अजय कुमार नोतवानी वि. म.प्र. राज्य) ...2409

विदेशी मदिरा नियम, म.प्र. 1996, नियम 8 – विदेशी मदिरा का विक्रय – यह तर्क किया गया कि शब्द "या ऐसे अन्य प्रकार से जैसा राज्य सरकार समय–समय पर निदेशित करे" के बाद के उपबंध केवल लॉटरी निकालने के लिए लागू होते हैं न कि आवेदन आमंत्रित करने से छूट देने के लिए – अभिनिर्धारित – यदि शब्द 'या' के बाद खण्ड 8(1)(ए) का उपबंध एक बार पढ़ा जाए तो यह स्पष्ट हो जाएगा कि यह राज्य सरकार को विषय को ऐसे अन्य प्रकार से जैसा राज्य सरकार समय–समय पर निदेशित करे व्यवहार करने की शक्ति प्रदान करता है – ये शब्द अलग नही पढ़े जा सकते बल्कि वे व्यापकता में पढ़े जाना चाहिए क्योंकि वे पूर्ववर्ती उपबंधों को नियंत्रित करते हैं जिसमें आवेदन आमंत्रित करने के द्वारा नियत प्राथमिक शुल्क और लायसेंस शुल्क पर व्यक्तिगत आधार पर लायसेंस प्रदान किया जाना शामिल है। (मदन मोहन चतुर्वेदी वि. म. प्र. राज्य) ...2776

विदेशी मदिरा नियम, म.प्र. 1996, नियम 8 – देखें – संविधान, अनुच्छेद 19 (मदन मोहन चतुर्वेदी वि. म.प्र. राज्य) ...2776

मूलभूत नियम, म.प्र., नियम 56(3) – अनिवार्य सेवानिवृत्ति – याची कार्यपालन यंत्री के रूप में कार्यरत – उसका सेवा अभिलेख बहुत अच्छा था और उसकी सत्यनिष्ठा संदेहपूर्ण नही थी – किन्तु उसे उसके विरुद्ध विभागीय जाँच और एक आपराधिक मामला लम्बित होने के आधार पर अनिवार्य रूप से सेवानिवृत्त किया गया – अभिनिर्धारित – अनिवार्य सेवानिवृत्ति का आश्रय केवल उन अधिकारियों को हटाने के लिए लिया जाता है जिनकी उपयोगिता अधिक समय तक सेवा में बने रहने में नही है या अनुपयोगी हो गये हैं या उनका सेवा में बने रहना लोक हित में नही है – विभागीय जाँच और आपराधिक मामले का लम्बित होना अनिवार्य सेवानिवृत्ति का आधार नही बनाया जा सकता क्योंकि यह शास्ति के समान होगा – अनिवार्य सेवानिवृत्ति का आदेश अभिखण्डित – वह उसकी अधिवार्षिकी की आयु तक सेवा में होना समझा जाएगा – पिछले पूर्ण वेतन, पुनरीक्षित पेंशन और समस्त पारिणामिक लाभों के लिए भी हकदार – याचिका मंजूर। (एस.सी. तांतिया वि. म.प्र. राज्य) ...2594

मूलभूत नियम, म.प्र., नियम 56(3) – अनिवार्य सेवानिवृत्ति – याची का सेवा अभिलेख उत्तम था और ऐसी कोई परिस्थिति नहीं जिसके अधीन एक प्रज्ञावान व्यक्ति इस निष्कर्ष पर पहुंच सके कि याची का सेवा अभिलेख लोकहित में उसकी अनिवार्य सेवानिवृत्ति समर्थित करता है – याची के विरुद्ध तीन विभागीय कार्यवाहियों का लम्बित होना उसकी अनिवार्य सेवानिवृत्ति समर्थित नही करेगा क्योंकि विभागीय कार्यवाही के लम्बन ने याची के कार्य पर प्रभाव नही डाला है – विभागीय जाँचों के लम्बित होने के आधार पर याची की अनिवार्य सेवानिवृत्ति स्वतः अवैधानिक। (सुरेश चंद पंड्या वि. म.प्र. राज्य) ...2318

साधारण खंड अधिनियम, (1897 का 10), धारा 6 खंड 22 – देखें – सहकारी

Krishi Aur Gramin Vikas Bank Adhiniyam, M.P., 1999, Section 50(2) [Arvind Kumar Bhargava v. Lalit Parashar] ...2471

General Clauses Act, (10 of 1897), Section 27 - See - *Negotiable Instruments Act, 1881, Section 138* [Mujaffar Hussain Mansoori v. Devendra Trivedi] ...2687

General Sales Tax Act, M.P. 1958 (2 of 1959), Section 43(1) - *Whether imposition of penalty u/s 43(1) of the Act without establishing mens rea would be justified - Held - An existence of a guilty mind with inaccurate return would lead to imposition of penalty and not alone the inaccurate return - Petition dismissed.* [Food Corporation of India v. Assistant Commissioner of Sales Tax] ...3141

Government of India Act, (of 1915), Section 106 - See - *Constitution, Articles 216, 225, 226* [S.P. Anand v. The Registrar General, M.P. High Court, Jabalpur] (FB)...2172

Gram Panchayat (Powers and Functions of the Secretary) Rules, M.P., 1999, Rule 4(1) - ***Official duties of Secretary*** - *Petitioner appointed as Panchayat Karmi and subsequently notified as Secretary - Samajik Suraksha Pension sanctioned in favour of Parmo Bai - After her remarriage Gram Panchayat by resolution diverted Nirashrit Pension in favour of another lady namely Parmo Bai - Held - Gram Panchayat not empowered to sanction Nirashrit Pension - Petitioner being Secretary merely carried out resolution - Resolution passed in 1996 - Rules, 1999 came into force in 1999 - Nothing on record to show that Panchayat Karmi at that time had to use his own wisdom contrary to resolution - Petitioner has not misused his post.* [Kailash Babu Rai v. State of M.P.] ...2278

Guardians and Wards Act (8 of 1890), Sections 7, 25, Hindu Minority and Guardianship Act, 1956, Section 6(b) - ***Custody of minor illegitimate child*** - *In case of illegitimate boy or an illegitimate unmarried girl - The mother, and thereafter, the father is natural guardian - Boy living with mother and getting education - Mother willing to keep son - Son also feels comfortable with mother - Held - In case of guardianship of minor child, the paramount consideration is welfare of the child - Son will reside with mother the natural guardian - Appeal allowed.* [Saudarabai (Smt.) v. Shri Ram Ratan] ...2617

High Court Rules and Orders, M.P., Section 3 - See - *Constitution, Articles 216, 225, 226* [S.P. Anand v. The Registrar General, M.P. High Court, Jabalpur] (FB)...2172

Hindu Marriage Act (25 of 1955), Section 13(i-a) - ***Cruelty*** - *What amounts to - Wife levelling allegation with respect to demand of dowry, harassment, torture by husband and potency of husband - There is no evidence to draw inference about such allegation - False allegations causes grave mental agony and pain amounts to cruelty.* [Vandhana Gupta (Smt.) v. Rajesh Gupta] ...3213

कृषि और ग्रामीण विकास बैंक अधिनियम, म.प्र., 1999, धारा 50(2) (अरविंद कुमार भार्गव वि. ललित पाराशर) ...2471

साधारण खण्ड अधिनियम, (1897 का 10), धारा 27 – देखें – परक्राम्य लिखत अधिनियम 1881, धारा 138 (मुजफर हुसैन मंसूरी वि. देवेन्द्र त्रिवेदी) ...2687

साधारण विक्रय–कर अधिनियम, म.प्र. 1958 (1959 का 2), धारा 43(1) – क्या आपराधिक मनःस्थिति स्थापित किये बिना अधिनियम की धारा 43(1) के अन्तर्गत शास्ति का अधिरोपण न्यायोचित होगा – अभिनिर्धारित – दूषित मन के अस्तित्व के साथ गलत विवरणी होने पर शास्ति का अधिरोपण किया जायेगा न कि केवल गलत विवरणी पर – याचिका खारिज। (फुड कारपोरेशन ऑफ इंडिया वि. असिस्टेंट कमिश्नर ऑफ सेल्स टैक्स) 3141

भारत शासन अधिनियम, (1915 का), धारा 106 – देखें – संविधान, अनुच्छेद 216, 225, 226 (एस.पी. आनंद वि. द रजिस्ट्रार जनरल, एम.पी. हाई कोर्ट, जबलपुर) (FB)---2172

ग्राम पंचायत (सचिव की शक्तियाँ और कार्य) नियम, म.प्र., 1999, नियम 4(1) – सचिव के पदीय कर्तव्य – याची पंचायत कर्मी के रूप में नियुक्त हुआ और तत्पश्चात् सचिव के रूप में अधिसूचित किया गया – सामाजिक सुरक्षा पेंशन परमो बाई के हित में मंजूर हुई – उसके पुनर्विवाह के पश्चात् ग्राम पंचायत ने प्रस्ताव द्वारा निराश्रित पेंशन परमो बाई नामक दूसरी महिला के हित में परिवर्तित कर दी – अभिनिर्धारित – ग्राम पंचायत निराश्रित पेंशन मंजूर करने को सशक्त नहीं – याची ने सचिव होने के नाते केवल प्रस्ताव का पालन किया – प्रस्ताव 1996 में पारित हुआ – नियम 1999 प्रवर्तन में 1999 में आए – अभिलेख पर यह दर्शाने के लिए कुछ नहीं कि पंचायत कर्मी को उस समय प्रस्ताव के प्रतिकूल अपनी स्वयं की बुद्धि का प्रयोग करना था। (कैलाश बाबू राय वि. म.प्र. राज्य) ...2278

संरक्षक और प्रतिपाल्य अधिनियम (1890 का 8), धाराएँ 7, 25, हिन्दू अप्राप्तवयता और संरक्षकता अधिनियम, 1956, धारा 6(बी) – अप्राप्तवय जारज बालक की अभिरक्षा – जारज बालक या जारज अविवाहित बालिका के मामले में – माता, और उसके बाद, पिता प्रा. तिक संरक्षक है – बालक माता के साथ रह रहा और शिक्षा प्राप्त कर रहा – माता पुत्र को रखने की इच्छुक – पुत्र भी माता के साथ सुविधाजनक महसूस करता है – अभिनिर्धारित – अप्राप्तवय संतान की संरक्षकता के मामले में सर्वोपरि ध्यान संतान का कल्याण है – पुत्र प्रा.तिक संरक्षक माता के साथ रहेगा – अपील मंजूर। (सौदराबाई (श्रीमति) वि. श्रीराम रतन) ...2617

उच्च न्यायालय नियम और आदेश, म.प्र., धारा 3 – देखें – संविधान, अनुच्छेद 216, 225, 226 (एस.पी. आनंद वि. द रजिस्ट्रार जनरल, एम.पी. हाई कोर्ट, जबलपुर) (FB)---2172

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13**(i-a)** – क्रूरता की कोटि में क्या आता है – पत्नी ने पति द्वारा दहेज की मांग करने, तंग करने, यातना देने और पति के पुरुषत्व के बारे में अभिकथन किया – ऐसा कोई साक्ष्य नही कि जिससे ऐसे अभिकथन के बारे में निष्कर्ष निकाला जाए – असत्य अभिकथन गंभीर मानसिक त्रास और कष्ट कारित करते हैं जो क्रूरता की कोटि में आता है। (बंधना गुप्ता (श्रीमति) वि. राजेश गुप्ता) ...3213

Hindu Minority and Guardianship Act, (36 of 1956) , Section 6(b) - See - *Guardians and Wards Act, 1890, Sections 7, 25* [Saudarabai (Smt.) v. Shri Ram Ratan] ...2617

Hindu Succession Act, (30 of 1956), Section 23, Hindu Succession (Amendment) Act, 2005 - *Right of female in succession - Bar to file a partition suit* - *Held - A perusal of the Amendment Act, 2005, it is clear that intention of the legislature is to bring female and male heirs on equal footing - By omitting Section 23 of the Act, 1956 no new right is created in favour of female, but only a bar of filing a suit is lifted - The female had a share in the property even before coming into force of Hindu Succession (Amendment) Act, 2005, but only restriction of their right shall bar for filing a suit for partition in the property which is kept by the family members, and the said bar is lifted - In view of this fact the said bar will operate retrospective and benefit of the said omission can be extended to the present appellant - Appeal allowed.* [Shakuntala Devi Singhal v. Goverdhan Das] ...2641

Hindu Succession (Amendment) Act, 2005 - See - *Hindu Succession Act, 1956, Section 23* [Shakuntala Devi Singhal v. Goverdhan Das] ...2641

Income Tax Act (43 of 1961), Sections 11, 12A, 12AA, 260A - Whether a Krishi Upaj Mandi is entitled for registration u/s 12A & 12AA and exemption u/s 11 - *The object of establishment of Krishi Upaj Mandi is to protect the interest of farmers and ensure that they are not exploited - Fees charged has nexus with service rendered - Mandi does not have any commercial activity - Mandi charges 2% from farmers and out of that 1.2% is directly transferred to State - Held - Mandies entitled for registration and exemption - Order of Income Tax Appellate Tribunal upheld - Appeal dismissed.* [Commissioner of Income Tax v. Krishi Upaj Mandi Samiti] ...3045

Income Tax Act (43 of 1961), Sections 132, 245, 245(1), 245-C(1), 245-D(3), 245-D(4) - *Power of Income Tax Settlement Commission u/s 245 of the Act* - *I.T. Department carried out a search operation and seized some documents and assets - Petitioner filed application for settlement u/s 245-C(1) of the Act before Settlement Commission and admitted fact of undisclosed income - Department issued number of letters for submission of detailed information - Petitioner did not submit any reply - The Commission directed that an enquiry be conducted by the Department - Order challenged on the ground that direction for an enquiry is against the provisions of Section 245 - It is obligatory on the part of Commission to accept the income disclosed by the petitioner and there is no provision under the Act to direct the department for enquiry or verification - Held - The petitioner did not submit any reply to the Department - In such circumstances it would not be possible for the Commission to determine that whether the petitioner has made full & true disclosure of his income - It is the important point which has to be decided by the Commission because the benefit*

हिन्दू अप्राप्तवयता और संरक्षकता अधिनियम, (1956 का 36), धारा 6(बी) – देखें –संरक्षक और प्रतिपाल्य अधिनियम 1890, धाराएँ 7, 25, (सौदराबाई (श्रीमति) वि. श्रीराम रतन) ...2617

हिन्दू उत्तराधिकार अधिनियम, (1956 का 30), धारा 23, हिन्दू उत्तराधिकार (संशोधन) अधिनियम, 2005 –. उत्तराधिकार में स्त्री का अधिकार – विभाजन का वाद पेश करने पर रोक – अभिनिर्धारित – संशोधन अधिनियम, 2005 के परिशीलन से यह स्पष्ट है कि विधायिका का आशय स्त्री और पुरुष वारिसों को समान स्थिति पर लाना है – 1956 के अधिनियम की धारा 23 के लोप करने के द्वारा स्त्री के पक्ष में कोई नया अधिकार सृष्ट नही किया गया है, बल्कि केवल वाद पेश करने की रोक को उठाया गया है – हिन्दू उत्तराधिकार (संशोधन) अधिनियम, 2005 के अस्तित्व में आने के पूर्व भी स्त्री सम्पत्ति में हिस्सा रखती थी, किन्तु उसके अधिकार की रोक केवल सम्पत्ति में विभाजन के लिए वाद पेश करने पर रोक लगाएगी, जो परिवार के सदस्यों द्वारा रखीं गई है, और यह रोक उठाई गई है – इस तथ्य की दृष्टि गोचरता में कथित रोक भूतलक्षी रूप से प्रवर्तित होगी और कथित लोप का लाभ वर्तमान अपीलार्थी को दिया जा सकता है – अपील मंजूर। (शकुंतला देवी सिंघल वि. गोवर्धन दास) ...2641

हिन्दू उत्तराधिकार (संशोधन) अधिनियम, 2005 – देखें – हिन्दू उत्तराधिकार अधिनियम, 1956, धारा 23, (शकुंतला देवी सिंघल वि. गोवर्धन दास) ...2641

आयकर अधिनियम (1961 का 43), धाराएँ 11, 12क, 12कक, 260क – क्या कोई कृषि उपज मण्डी धारा 12क एवं 12कक के अन्तर्गत पंजीयन और धारा 11 के अन्तर्गत छूट की हकदार है – कृषि उपज मण्डी को स्थापित करने का उद्देश्य किसानों के हितों का संरक्षण करना और यह सुनिश्चित करना है कि उनका शोषण न हो – आरोपित शुल्क का सम्बन्ध दी गई सेवा के साथ है – मण्डी की कोई वाणिज्यिक गतिविधि नहीं है – मण्डी किसानों से 2 प्रतिशत वसूल करती है और उसमें से 1.2 प्रतिशत सीधे राज्य को अंतरित करती है – अभिनिर्धारित – मण्डियाँ पंजीयन और छूट की हकदार – आयकर अपीलीय अधिकरण के आदेश की पुष्टि की गई – अपील खारिज। (कमिश्नर ऑफ इनकम टेक्स वि. कृषि उपज मंडी समिति) ...3045

आयकर अधिनियम (1961 का 43), धाराएँ 132, 245, 245(1), 245–सी(1), 245–डी(3), 245–डी(4) – अधिनियम की धारा 245 के अन्तर्गत आयकर सेटलमेंट कमीशन की शक्ति – आयकर विभाग ने तलाशी अभियान चलाया और कुछ दस्तावेज और आस्तियाँ अभिग्रहीत कीं – याची ने अधिनियम की धारा 245–सी(1) के अन्तर्गत सेटलमेंट कमीशन के समक्ष समझौते के लिए आवेदन पेश किया और अप्रकटित आय के तथ्य को स्वीकार किया – विभाग ने विस्तृत जानकारी पेश करने के लिए कई पत्र जारी किये – याची ने कोई जवाब पेश नही किया – कमीशन ने निदेश दिया कि विभाग द्वारा जाँच की जाए – आदेश को इस आधार पर चुनौती दी गई कि जाँच के लिए निदेश धारा 245 के उपबंधों के विपरीत है – कमीशन के लिए यह आज्ञापक है कि याची द्वारा प्रकटित आय को स्वीकार कर ले और अधिनियम के अन्तर्गत ऐसा कोई उपबंध नही है कि विभाग को जाँच या सत्यापन के लिए निदेश दिया जाए – अभिनिर्धारित – याची ने विभाग को कोई जवाब प्रस्तुत नही किया – ऐसी परिस्थितियों में कमीशन के लिए यह अवधारित करना संभव नही होगा कि याची ने उसकी आय का पूर्ण और सही प्रकटीकरण किया है – यह महत्वपूर्ण बिन्दु है जो कमीशन द्वारा विनिश्चित किया जाना है क्योंकि धारा का लाभ केवल कमीशन द्वारा, यह निष्कर्ष अभिलिखित करने के बाद कि निर्धारिती ने उसकी पूरी और सही आय प्रकट की है, दिया जा सकता

of section can only be given by the Commission after recording a finding that the assessee has made full and true disclosure of his income - Petition dismissed. [Ashok Kumar Goyal v. Income Tax Settlement Commission] ...3161

Income Tax Act, (43 of 1961), Sections 132(A), 293 - See - *Criminal Procedure Code, 1973, Sections 41(2), 102, 451, 457* [Director of Income Tax (Investigation) v. State of M.P.] ...2483

Income Tax Act, (43 of 1961), Sections 276C, 278B - See - *Criminal Procedure Code, 1973, Section 482* [Harkawat & Company (M/s.) v. Union of India] ...*77

Industrial Disputes Act (14 of 1947), Sections 2-A, 25-F - ***Retrenchment*** *- Petitioner working continuously for period of 18 years with notional breaks - The appointment not extended - Labour Court rejecting the claim that as the contract has not been extended, the provision of Section 25-F of Act shall not apply - Held - Workman was not appointed for a fixed term and the project is not over - The services would not be brought to an end without following the due process of law particularly when the appointment was not a contract or a fixed term appointment.* [Pritam Singh v. Cancer Hospital and Research Institute] ...3106

Industrial Disputes Act, (14 of 1947), Section 10 - See - *Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P., 2005, Section 2(1)* [General Manager, Bank Note Press, Dewas v. Bank Note Press Office Staff Association, Dewas] ...2218

Industrial Disputes Act (14 of 1947), Section 11(1), (3), Industrial Disputes (Central) Rules, 1957, Rule 10B(6) - ***Examination of witnesses on affidavit*** *- Application filed for oral examination of witnesses as they are illiterate - Application rejected by Tribunal - Held - Whoever swears affidavit must swear that contents of affidavit are true to his knowledge - Deponent must understand the facts stated in affidavit - Finding of tribunal that witnesses although illiterate, but they can understand the facts sworn by them in affidavits is fallacious - Tribunal directed to record oral evidence - Appeal allowed.* [Ispat Khadan Janta Mazdoor Union v. Steel Authority of India Ltd.] ...2508

Industrial Disputes Act (14 of 1947), Section 25-F - *Badlidar daily wager employee worked for more than one year continuously i.e. for more than 240 days in one year - Termination without enquiry or one month prior notice or wages in lieu of such notice - Held - Badli employee is entitled for protection u/s 25-F of Act - Order of Labour Court and Tribunal, finding termination illegal and directing reinstatement, upheld - Petition dismissed.* [M.P. Road Transport Corporation v. Anil Yadav] ...2867

Industrial Dispute Act (14 of 1947), Section 25-O - *Closure - Closure*

है – याचिका खारिज। (अशोक कुमार गोयल वि. इनकम टैक्स सेटलमेंट कमीशन) ...3161

आयकर अधिनियम, (1961 का 43), धाराएँ 132(ए), 293 – देखें – दण्ड प्रक्रिया संहिता, 1973, धाराएँ 41(2), 102, 451, 457 (डायरेक्टर ऑफ इनकम टेक्स (इनवेस्टीगेशन) वि. म.प्र. राज्य) ...2483

आयकर अधिनियम, (1961 का 43), धाराएँ 276सी, 278बी – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (हरकावत एन्ड कं. (मे.) वि. यूनियन ऑफ इंडिया) ---*77

औद्योगिक विवाद अधिनियम (1947 का 14), धाराएँ 2–ए, 25–एफ – छंटनी – याची कल्पित अंतरालों के साथ लगातार 18 वर्ष से कार्यरत – नियुक्ति नही बढ़ायी गई – श्रम न्यायालय ने दावा खारिज किया कि संविदा नही बढ़ाया गया था इसलिए अधिनियम की धारा 25–एफ के उपबंध लागू नही होंगे – अभिनिर्धारित – कर्मकार निश्चित अवधि के लिए नियुक्त नही किया गया और परियोजना पूर्ण नही हुई – विधि की सम्यक् प्रक्रिया का पालन किये बिना सेवाऐं समाप्त नही की जायेंगी विशिष्टतः जब नियुक्ति संविदा या निश्चित अवधि की नियुक्ति नही थी। (प्रीतम सिंह वि. केंसर हॉस्पिटल एंड रिसर्च इंस्टीट्यूट) ...3106

औद्योगिक विवाद अधिनियम, (1947 का 14), धारा 10 – देखें –उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005, धारा 2(1) (जनरल मेनेजर, बैंक नोट प्रेस, देवास वि. बैक नोट प्रेस आफिस स्टाफ एसोसिएशन, देवास) ...2218

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 11(1), (3), औद्योगिक विवाद (केन्द्रीय) नियम, 1957, नियम 10बी(6) – साक्षियों का शपथपत्र पर परीक्षण – साक्षियों के मौखिक परीक्षण के लिए आवेदन पेश क्योंकि वे निरक्षर हैं – अधिकरण द्वारा आवेदन खारिज – अभिनिर्धारित – जो कोई शपथपत्र पर शपथ लेता है उसे यह शपथ लेनी चाहिए कि शपथपत्र की अन्तर्वस्तु उसके ज्ञान में सत्य है – शपथकर्ता को शपथपत्र में कथित तथ्यों को अवश्य समझना चाहिए – अधिकरण का निष्कर्ष, कि साक्षीगण यद्यपि निरक्षर हैं किन्तु वे उनके द्वारा शपथपत्र में किये गये तथ्यों को समझ सकते हैं, भ्रामक है – अधिकरण को मौखिक साक्ष्य अभिलिखित करने के लिए निदेशित किया गया – अपील मंजूर। (इस्पात खदान जनता मजदूर यूनियन वि. स्टील अथॉरिटी ऑफ इंडिया) ...2508

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 25–एफ – बदलीदार दैनिक वेतनभोगी कर्मचारी ने लगातार एक वर्ष से अधिक अर्थात् एक वर्ष में 240 दिन से अधिक कार्य किया – सेवा समाप्ति, जाँच या एक माह की पूर्व सूचना या ऐसी सूचना के बदले वेतन के बिना – अभिनिर्धारित – बदली कर्मचारी अधिनियम की धारा 25–एफ के संरक्षण का हकदार – श्रम न्यायालय और अधिकरण का सेवा समाप्ति को अवैध पाने और पुनर्नियुक्ति के निदेश देने वाला आदेश पुष्ट – याचिका खारिज। (म.प्र. रोड ट्रांसपोर्ट कारपोरेशन वि. अनिल यादव) ...2867

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 25–ओ – समापन – औद्योगिक

of industrial unit challenged - Held - The Division Bench while affirming the findings of the learned Single Judge held that the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and persons interested in such closure may, having regard to genuineness and adequacy of reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission for closure of the unit - Writ Appeal Dismissed. [M.I.S.C. Karmchari Sangh v. State of M.P.] ...2197

Industrial Disputes (Central) Rules, 1957, Rule 10B(6) - See - *Industrial Disputes Act, 1947, Section 11(1), (3)* [Ispat Khadan Janta Mazdoor Union v. Steel Authority of India Ltd.] ...2508

Industrial Relations Act, M.P. (27 of 1960), Sections 27, 31, 33 & 97 *- All employees including office bearers of petitioner Union have filed affidavits and accepted the agreements and stated that the award in terms of agreements be passed - Though the petitioner Union has seriously contended that the agreements are no agreements in eye of law and could not be accepted as they were neither signed by their office bearers nor were they legally tenable in view of the provisions of Section 31 & 33 of Act - Held - It has neither opposed these agreements before Registrar at the time of registration u/s 33 of Act nor did it raise any dispute under various provisions of Act under Chapter XVI before any of the authorities under the Act - Therefore, issues as to whether the agreements were valid or not or obtained by fraud or a nullity, were neither subject matter of dispute before Industrial Court nor this court - Once agreements are registered u/s 33 of Act, they are binding on all concerned as per the provisions of Section 97 of Act - There is no legal infirmity or illegality in the award.* [Katni Pottery Karamchari Sangh v. M/s. Associated Cement Companies Ltd.] ...2870

Industrial Relations Act, M.P. (27 of 1960), Sections 27, 31, 33 & 97 *- Award challenged on the ground that it was passed in terms of the settlement arrived at between the parties without answering or adjudicating upon the disputes that were referred to Industrial Tribunal by State Government - Held - If a settlement is arrived at between the disputing parties even during the pendency of a reference before the Industrial Tribunal, the tribunal has power to pass an award in terms of the settlement and tribunal was not bound to answer the reference.* [Katni Pottery Karamchari Sangh v. M/s. Associated Cement Companies Ltd.] ...2870

Industrial Relations Act, M.P. (27 of 1960), Section 51 - *Where a dispute is referred in accordance with Section 51 of Act to the Industrial Court for arbitration by the Government and during pendency of reference a settlement of industrial dispute is arrived at between the employer and the*

इकाई के समापन को चुनौती – अभिनिर्धारित – खण्ड न्यायपीठ ने विद्वान एकल न्यायाधीश के निष्कर्षों की अभिपुष्टि करते समय अभिनिर्धारित किया कि समुचित सरकार, ऐसी जाँच जो वह उचित समझती है करने के उपरांत और नियोक्ता, ऐसे समापन में हितबद्ध कर्मकारों और व्यक्तियों को सुने जाने का उचित अवसर देने के उपरांत, नियोक्ता द्वारा कथित कारणों की विशुद्धता और पर्याप्तता, साधारण जनता के हितों और अन्य सभी सुसंगत कारकों को ध्यान में रखते हुए, आदेश द्वारा और लिखित में अभिलिखित किये जाने वाले कारणों से, इकाई के समापन के लिए ऐसी अनुमति दे सकेगी या देने से इंकार कर सकेगी। (एम.आई.एस.सी. कर्मचारी संघ वि. म.प्र. राज्य) ...2197

औद्योगिक विवाद (केन्द्रीय) नियम, 1957, नियम 10बी(6) – देखें – औद्योगिक विवाद अधिनियम, 1947, धारा 11(1), (3) (इस्पात खदान जनता मजदूर यूनियन वि. स्टील अथॉरिटी ऑफ इंडिया) ...2508

औद्योगिक संबंध अधिनियम, म.प्र. (1960 का 27), धाराएँ 27, 31, 33 व 97 – याची यूनियन के पदाधिकारियों सहित सभी कर्मचारियों ने शपथपत्र पेश किये और अनुबंधों को स्वीकार किया और कथन किया कि अनुबंधों के निबंधनों के अनुरूप अधिनिर्णय पारित किया जाए – यद्यपि याची यूनियन ने गम्भीर रूप से प्रतिवादित किया कि अनुबंध विधि की दृष्टि में अनुबंध नही हैं और स्वीकार नही किये जा सकते क्योंकि वे न तो उनके पदाधिकारियों द्वारा हस्ताक्षरित किये गये और न वे अधिनियम की धारा 31 व 33 के उपबंधों की दृष्टिगोचरता में विधिक रूप से मान्य किये जाने योग्य थे – अभिनिर्धारित – उसने न तो रजिस्ट्रार के समक्ष अधिनियम की धारा 33 के अन्तर्गत पंजीयन के समय इन अनुबंधों का विरोध किया और न ही उसने अधिनियम के अध्याय 16 के विभिन्न उपबंधों के अन्तर्गत किसी प्राधिकारी के समक्ष विवाद को उठाया – इसलिए विवाद्यक, कि अनुबंध वैध थे या नहीं या कपटपूर्वक प्राप्त किये या शून्य थे, न तो औद्योगिक न्यायालय और न ही इस न्यायालय के समक्ष विवाद की विषयवस्तु थे – एक बार जब अनुबंध अधिनियम की धारा 33 के अन्तर्गत रजिस्ट्रीकृत हो जाते हैं, तो वे सभी सम्बद्ध पक्षकारों पर अधिनियम की धारा 97 के उपबंधों के अनुसार बंधनकारी हैं – अधिनिर्णय में कोई विधिक अशक्तता या अवैधता नही है। (कटनी पॉटरी कर्मचारी संघ वि. में. एसोसिएटेड सीमेंट कं. लि.) ...2870

औद्योगिक संबंध अधिनियम, म.प्र. (1960 का 27), धाराएँ 27, 31, 33 व 97 – अधिनिर्णय को इस आधार पर चुनौती दी गई कि यह पक्षकारों के मध्य हुए समझौते के निबंधनों के अनुसार राज्य सरकार द्वारा औद्योगिक अधिकरण को निर्दिष्ट विवादों का समाधान या न्यायनिर्णय किये बिना पारित किया गया – अभिनिर्धारित – यदि औद्योगिक अधिकरण के समक्ष निर्देश के लम्बित रहने के दौरान भी पक्षकारों के मध्य समझौता होता है तो अधिकरण को समझौते के निबंधनों के अनुसार अधिनिर्णय पारित करने की शक्ति है और अधिकरण निर्देश का उत्तर देने के लिए बाध्य नही था। (कटनी पॉटरी कर्मचारी संघ वि. में. एसोसिएटेड सीमेंट कं. लि.) ...2870

औद्योगिक संबंध अधिनियम, म.प्र. (1960 का 27), धारा 51 – जहाँ विवाद सरकार द्वारा अधिनियम की धारा 51 के अनुसार मध्यस्थता के लिए औद्योगिक न्यायालय को निर्दिष्ट किया जाता है और निर्देश के लम्बित रहने के दौरान नियोक्ता और कर्मचारियों के मध्य औद्योगिक विवाद का समझौता हो जाता है – औद्योगिक न्यायालय को समझौते के निबंधनों को सम्यक् महत्व देना

employees -Industrial Court must give due weight to the terms of the settlement unless it is satisfied that the settlement was not just or fair or was vitiated by mala fides or absence of consent of the parties - The contention of the employer that the direction in the order of Industrial Court to regularise the services of 16 to 18 Temporary Substitute Pool employees in terms of Clause 9 of the settlement dated 20.10.1999 was beyond the jurisdiction of the Industrial Court and was a nullity, is misconceived. [Everest Industries Ltd., Kyomore v. Asbestos Karmchari Sangh] ...3075

Jail Manual - ***Release*** - *State Government's order dated 24.01.2004 whereby convicts of 65 years of age or above who underwent 4 years or excess punishment on 26.01.2004 were directed to be released unconditionally - Held - The benefit of Government's order cannot be snatched away from petitioner - Merely on account of absence of his proposal in the year 2004 - Petitioner was not a author of such a mistake and no fault could be found with him for denying him release pursuant to Government's order - It is not a case of granting retrospective benefits to the petitioner - It rather amounts to ractify the mistake which was committed by Jail Authority.* [Chhiddu alias Kanchhedi Lal v. State of M.P.] ...2860

Jail Manual, Rule 361(1) & 361(6), Penal Code, 1860, Section 302 - ***Release*** - *Petitioner was undergoing sentence for offence punishable u/s 302 I.P.C. - As per Jail Superintendent's order u/r 361(1) of Manual, he was released on ground of sickness - State Government issued an order that convicts of 65 years of age or more who have undergone 4 years imprisonment or more should be released - At the relevant time, when the Government's order was in force petitioner was on release and thus his case could not be proposed for consideration - Action challenged - Held - Object of Government's order was of beneficial nature for the convicted prisoners who were 65 years of age - As per rule 361(6), the period of release would be deemed to be the period in imprisonment - Petitioner having been released u/r 361(1) could not be deprived of the benefit of Government's order.* [Chhiddu alias Kanchhedi Lal v. State of M.P.] ...2860

Juvenile Justice Act (53 of 1986), Section 2(h), Juvenile Justice (Care and Protection of Children) Act, 2000, Section 2(k) - ***Juvenile*** - *Appellant failed to raise any objection about his age before the committal court or the trial court - The fact of age cannot be considered at the appellate stage because the objection in respect of age, is raised for the first in appellate court - This argument is not tenable that appellant was juvenile on the date of incident and juvenile court was competent to try case.* [Annu alias Anoop Kumar v. State of M.P.] ...2435

Juvenile Justice (Care and Protection of Children) Act, (56 of 2000), Section 2(k) - **See** - *Juvenile Justice Act 1986, Section 2(h)* [Annu alias Anoop Kumar v. State of M.P.] ...2435

चाहिए, जब तक यह संतुष्टि नही हो जाती कि समझौता न्यायसंगत या ऋजु नही था या असद्भावना या विवाद के पक्षकारों की सहमति के अभाव से दूषित था – नियोक्ता का तर्क, कि औद्योगिक न्यायालय के आदेश में समझौता तारीख 20.10.1999 के खण्ड 9 के निबंधनों के अनुसार 16 से 18 अस्थायी स्थानापन्न पूल कर्मचारियों की सेवाएँ नियमित करने का निदेश औद्योगिक न्यायालय की अधिकारिता से परे था और शून्य था, गलत है। (एव्हरेस्ट इंडस्ट्रीज लि., केमोर वि. एस्वेसटास कर्मचारी संघ) ...3075

जेल मेन्युअल – छोड़ देना – राज्य सरकार का आदेश तारीख 24.01.2004 जिसके द्वारा 65 वर्ष या उससे अधिक उम्र के सिद्धदोषियों को, जो तारीख 26.01.2004 को 4 वर्ष या उससे अधिक सजा भुगत चुके हैं, बिना शर्त छोड़े जाने का निदेश दिया गया – अभिनिर्धारित – वर्ष 2004 में याची के प्रस्ताव के अभाव के कारण – याची को सरकार के आदेश के लाभ से वंचित नही किया जा सकता – याची ऐसी गलती के लिए दोषी नही था और सरकार के आदेश के अनुसरण में उसे छोड़ने से इंकार करने में उसका कोई दोष नही पाया गया – यह याची को भूतलक्षी लाभ प्रदान करने का मामला नही है – बल्कि यह गलती को सुधारने के समान है जो जेल प्राधिकारी के द्वारा की गई। (छिद्दू उर्फ कंछेदी लाल वि. म.प्र. राज्य) ...2860

जेल मेन्युअल, नियम 361(1) व 361(6), दण्ड संहिता, 1860, धारा 302 – छोड़ देना – याची भा.द.सं. की धारा 302 के अन्तर्गत दण्डनीय अपराध के लिए दण्डादेश भुगत रहा था – मेन्युअल के नियम 361(1) के अन्तर्गत जेल अधीक्षक के आदेशानुसार वह बीमारी के आधार पर छोड़ा गया – राज्य सरकार ने आदेश जारी किया कि 65 वर्ष या उससे अधिक उम्र के सिद्धदोषियों को, जो 4 वर्ष या उससे अधिक कारावास भुगत चुके हैं, छोड़ दिया जाना चाहिए – सुसंगत समय पर, जब सरकार का आदेश प्रवृत्त था, याची छूटा हुआ था और इस प्रकार उसका मामला विचार के लिए प्रस्तावित नही किया जा सका – कृत्य को चुनौती दी गई – अभिनिर्धारित – सरकार के आदेश का उद्देश्य सिद्धदोष बंदियों के लिए, जो 65 वर्ष की उम्र के थे, लाभप्रद प्रकृत का था – नियम 361(6) के अनुसार, छूटे रहने की कालावधि कारावास में होने की कालावधि समझी जायेगी – याची धारा 361(1) के अन्तर्गत छूटा हुआ होने से सरकार के आदेश के लाभ से वंचित नही किया जा सकता था। (छिद्दू उर्फ कंछेदी लाल वि. म.प्र. राज्य) ...2860

किशोर न्याय अधिनियम (1986 का 53), धारा 2(एच), किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम, 2000, धारा 2(के) – किशोर – अपीलार्थी उसकी उम्र के संबंध में कोई आपत्ति सुपुर्द करने वाले न्यायालय या विचारण न्यायालय के समक्ष उठाने में असफल रहा – उम्र का तथ्य अपील के प्रक्रम पर विचारित नहीं किया जा सकता क्योंकि उम्र के संबंध में आपत्ति प्रथम बार अपील न्यायालय में उठाई गई – यह तर्क मान्य नहीं है कि अपीलार्थी घटना की तारीख को किशोर था और किशोर न्यायालय मामले का विचारण करने के लिए सक्षम था। (अन्नू उर्फ अनूप कुमार वि. म.प्र. राज्य) ...2435

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम, (2000 का 56), धारा 2(के) – देखें –किशोर न्याय अधिनियम 1986, धारा 2(एच) (अन्नू उर्फ अनूप कुमार वि. म.प्र. राज्य) ...2435

Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973), Sections 2(1)(a), 2(1)(mmm) & 19 [As amended by Krishi Upaj Mandi (Sanshodhan) Vidheyak, M.P. 1990] -*Petitioners in the business of manufacture and sale of tobacco Choor, tobacco Rawa, tobacco dust, tobacco Kandy - Mandi Samiti levying Mandi fees on it - Action challenged by them - Held - The object of amendment in the Act of 1972 to drop out the word 'processed' was to exempt the processed goods from Mandi fees - The tobacco Choor, tobacco Rawa, tobacco dust and tobacco Kandy cannot be classified as 'processed goods', but they are 'agriculture produce' - Hence, aforesaid products cannot be exempted from payment of Mandi tax or fees - Mandi Samiti is entitled to levy Mandi fees on the aforesaid agriculture produce - Petition dismissed.* [Tapa Traders, Gwalior (M/s) v. Krishi Upaj Mandi Samiti] ...2906

Land Acquisition Act (1 of 1894), Sections 23 & 24 - *Matters to be considered and neglected in determining compensation* - *Use of land on the date of acquisition is material fact - Potential value on the date of notification u/s 4 is relevant and not subsequent user - In case of acquisition of developing land, certain deduction has to be made depending upon facts of each case - In case of large piece of land certain deduction is required to be made - In case of acquisition of large piece of land grant of compensation per sq.ft. illegal - Situation of land, distance from city are relevant consideration - Genuineness of transaction and time gap between sale transactions are relevant facts.* [Shanti Devi Tiwari (Smt.) v. Town Improvement Trust, Rewa] ...2336

Land Acquisition Act (1 of 1894), Sections 26(2) & 54, Limitation Act, 1963 (As amended w.e.f. 01.07.2002), Section 12(3) - ***Appeal against award*** - *Application for condonation of delay - Time spent for preparation of decree sought to be condoned - Held - After receiving the copy of award for about five months, no action was taken by the appellant for moving an application for preparation of decree - In view of Section 26(2) of the Land Acquisition Act and Section 12(3) of Limitation Act copy of decree along with appeal was not required to be filed - It could not be said that there is no delay in filing appeal - However, since impugned award is also under challenge in the appeal filed for enhancement by respondent No.1, where appellant can file cross-objection - Delay condoned with cost - Application disposed of.* [Bharat Petorleum Corporation Ltd. v. Umeshkumar] ...3169

Land Revenue Code, M.P. (20 of 1959) (As amended w.e.f. 15.12.1995), Sections 170B, 257(L-1) - ***Exclusive jurisdiction of Revenue Authorities*** - *Plaintiff purchased agriculture land by registered sale deed - Proceeding u/s 170B of Code was registered against him - Suit for declaration & injunction that he is Bhumiswami and respondent be restrained to dispossess him filed on 12.06.1995 - Suit dismissed on ground that jurisdiction of civil court is barred u/s 257 of Code - Held - Insertion of sub-clause (L-1) in*

कृषि उपज मण्डी अधिनियम, म.प्र. 1972 (1973 का 24), धाराएँ 2(1)(ए), 2(1)(एमएमएम) व 19 [कृषि उपज मण्डी (संशोधन) विधेयक, म.प्र. 1990 द्वारा यथासंशोधित] – याची तम्बाकू चूर, तम्बाकू रवा, तम्बाकू डस्ट, तम्बाकू केण्डी का कारोबार करते हैं – मण्डी समिति ने उस पर मण्डी शुल्क उदग्रहण किया – उनके द्वारा कृत्य को चुनौती दी गई – अभिनिर्धारित – अधिनियम 1972 में शब्द 'प्रसंस्कृत' को हटाने के संशोधन का उद्देश्य प्रसंस्कृत माल को मण्डी शुल्क से छूट प्रदान करना था – तम्बाकू चूर, तम्बाकू रवा, तम्बाकू डस्ट और तम्बाकू केण्डी 'प्रसंस्कृत माल' के रूप में वर्गीकृत नही किये जा सकते, बल्कि वे 'कृषि उत्पाद' हैं – इसलिए, उपर्युक्त उत्पादों को मण्डी कर या शुल्क के भुगतान से छूट प्रदान नही की जा सकती – मण्डी समिति उपर्युक्त कृषि उत्पादों पर मण्डी शुल्क उग्रहीत करने की हकदार है – याचिका खारिज। (तापा ट्रेडर्स, ग्वालियर (मे.) वि. कृषि उपज मंडी समिति) ...2906

भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 23 व 24 – प्रतिकर अवधारण करने में विचार करने वाले और उपेक्षा करने वाले विषय – अर्जन की तिथि पर भूमि का उपयोग सारवान् तथ्य है – धारा 4 के अधीन अधिसूचना की तिथि पर संभाव्य मूल्य सुसंगत है न कि पश्चात्वर्ती उपयोग – विकासशील भूमि के अर्जन की दशा में प्रत्येक मामले के तथ्यों पर निर्भर रहते हुए कुछ कटौती करनी पड़ती है – भूमि के बड़े टुकड़े की दशा में कुछ कटौती की जाना अपेक्षित है – भूमि के बड़े टुकड़े के अर्जन की दशा में प्रति वर्गफुट प्रतिकर देना अवैध – भूमि की स्थिति, शहर से दूरी सुसंगत विचार हैं – संव्यवहार की विशुद्धता और विक्रय संव्यवहारों के मध्य समयान्तर सुसंगत तथ्य हैं। (शांति देवी तिवारी (श्रीमति) वि. टाउन इम्प्रूव्हमेंट ट्रस्ट, रीवा) ...2336

भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 26(2) व 54, परिसीमा अधिनियम, 1963 (01.07.2002 से यथासंशोधित), धारा 12(3) – अधिनिर्णय के विरुद्ध अपील – विलम्ब माफी के लिए आवेदन – डिक्री तैयार होने में लगे समय की माफी चाही – अभिनिर्धारित – अधिनिर्णय की प्रतिलिपि प्राप्त होने के बाद लगभग पाँच माह तक अपीलार्थी द्वारा डिक्री तैयार करने के लिए आवेदन पेश करने के सम्बन्ध में कोई कार्यवाही नही की – भूमि अर्जन अधिनियम की धारा 26(2) और परिसीमा अधिनियम की धारा 12(3) के अनुसार अपील के साथ डिक्री की प्रतिलिपि पेश करना आवश्यक नही था – यह नही कहा जा सकता कि अपील पेश करने में कोई विलम्ब नही है – तथापि, चूंकि वृद्धि के लिए प्रत्यर्थी क्रमांक 1 द्वारा पेश अपील में भी आक्षेपित अधिनिर्णय को चुनौती दी गई है, जहाँ अपीलार्थी प्रत्याक्षेप पेश कर सकता है – विलम्ब खर्चे सहित माफ किया गया – आवेदन निपटाया गया। (भारत पेट्रोलियम कारपोरेशन लि. वि. उमेश कुमार) ...3169

भू राजस्व संहिता, म.प्र. (1959 का 20) (15.12.1995 से यथासंशोधित), धाराएँ 170बी, 257(एल–1) – राजस्व प्राधिकारियों की अनन्य अधिकारिता – वादी ने रजिस्टर्ड विक्रयपत्र द्वारा कृषि भूमि क्रय की – उसके विरुद्ध संहिता की धारा 170बी के अन्तर्गत कार्यवाही दर्ज – घोषणा और व्यादेश के लिए वाद कि वह भूमिस्वामी है और प्रत्यर्थी को उसे बेदखल करने से रोका जावे, 12.06.1995 को पेश किया – वाद इस आधार पर खारिज किया गया कि संहिता की धारा 257 के अन्तर्गत सिविल न्यायालय की अधिकारिता वर्जित है – अभिनिर्धारित – धारा 257 में उपखण्ड (एल–1) का अन्तःस्थापन 15.12.1995 से प्रभावी – स्पष्ट रूप से बताता है कि अन्तःस्थापन

Section 257 w.e.f. 15.12.1995 - Clearly indicates that prior to insertion there was no express bar on jurisdiction of civil court in matter covered u/s 170B - Suit was filed prior to 15.12.1995, therefore, jurisdiction of civil court was not barred - Judgment & decree of courts below set-aside - Case remanded - Appeal allowed. [Babu v. State of M.P.] ...2638

Land Revenue Code, M.P. (20 of 1959), Section 50, Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007, Section 51 - *Effect of repeal of enactment - As per Section 261 of the Code, Madhya Bharat Land Revenue & Tenancy Act was repealed and, therefore, procedure provided in Section 50 of the Code shall apply and not the provisions of the repealed enactment will be applicable.* [Choti Bai (Smt.) v. State of M.P.] ...2331

Land Revenue Code, M.P. (20 of 1959), Sections 50, 261, 262 & 262(1), Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007, Section 51 - ***Suo motu powers of revision*** *- Held - Though no time limit has been prescribed for exercising suo moto powers of revision, yet they should be exercised within a reasonable time.* [Choti Bai (Smt.) v. State of M.P.]...2331

Land Revenue Code, M.P. (20 of 1959), Section 51 - ***Review of Orders*** *- Suo motu review of order after 7 years - Cannot be held to be within a reasonable time.* [Ashok Kumar Dubey v. Smt. Parvati Bai] ...2831

Land Revenue Code, M.P. (20 of 1959), Sections 57 & 158 - **See** - *Public Trusts Act, M.P., 1951, Section 32* [Gayaprasad v. State of M.P.]...3200

Land Revenue Code, M.P. (20 of 1959), Sections 59(5), 258(2)(iii) - ***Regulation of assessment of land revenue on diversion of land - Town Planning*** *- Validity of Rule 14 of Notification dated 24.01.2002 fixing rates for the premium of different cities challenged as arbitrary and unreasonable as relevant factors mentioned in Code not taken into consideration - Held - Important cities classified differently from smaller cities and towns, according to their population - Villages also classified differently - Rates prescribed accordingly - Schedule based on reasonable differentia and therefore, rates prescribed therein are not arbitrary or discriminatory - Appeal dismissed.* [Raj Homes Pvt. Ltd. v. State of M.P.] SC ...2749

Land Revenue Code, M.P. (20 of 1959), Section 117 - *Whether Collector's name be recorded unilaterally without giving notice to the Pujari - Held - Unilaterally recording the name of Collector was bad in law but will continue in the interest of deity - The Pujari will continue to hold the office if not held to be otherwise disqualified.* [Gaya Prasad v. State of M.P.]...3200

Land Revenue Code, M.P. (20 of 1959), Section 158(1)(b) - ***Natural Justice*** *- The person claiming Bhumiswami rights over the land belonging to public temple, cannot be evicted without giving an opportunity of hearing, even if the Government alleges him to be a trespasser - Notice is necessary before taking action.* [Gaya Prasad v. State of M.P.] ...3200

के पूर्व धारा 170बी के अन्तर्गत आने वाले मामले में सिविल न्यायालय की अधिकारिता पर कोई अभिव्यक्त रोक नही थी – वाद 15.12.1995 के पूर्व पेश किया गया, इसलिए सिविल न्यायालय की अधिकारिता वर्जित नही थी – अधीनस्थ न्यायालयों के निर्णय व डिक्री अपास्त – मामला प्रतिप्रेषित – अपील मंजूर। (बाबू वि. म.प्र. राज्य) ...2638

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 50, मध्य भारत भू–आगम और कृषकाधिकार विधान, संवत् 2007, धारा 51 – अधिनियमिति के निरसन का प्रभाव – संहिता की धारा 261 के अनुसार, मध्य भारत भू–आगम और कृषकाधिकार विधान निरसित हो गया, और इसलिए संहिता की धारा 50 में उपबंधित प्रक्रिया लागू होगी और निरसित अधिनियमिति के उपबंध लागू नही होंगे। (छोटी बाई (श्रीमति) वि. म.प्र. राज्य) ...2331

भू राजस्व संहिता, म.प्र. (1959 का 20), धाराएँ 50, 261, 262 व 262(1), मध्य भारत भू–आगम और कृषकाधिकार विधान, संवत् 2007, धारा 51 – पुनरीक्षण की स्वप्रेरणाधीन शक्तियाँ – अभिनिर्धारित – यद्यपि पुनरीक्षण की स्वप्रेरणाधीन शक्तियाँ प्रयोग करने के लिए कोई समय सीमा विहित नही है, तथापि इनका प्रयोग युक्तियुक्त समय के भीतर किया जाना चाहिए। (छोटी बाई (श्रीमति) वि. म.प्र. राज्य) ...2331

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 51 – आदेशों का पुनर्विलोकन – आदेश का 7 वर्ष बाद स्वप्रेरणा से पुनर्विलोकन – युक्तियुक्त समय के भीतर होना अभिनिर्धारित नही किया जा सकता। (अशोक कुमार दुबे वि. श्रीमति पार्वती बाई) ...2831

भू राजस्व संहिता, म.प्र. (1959 का 20), धाराएँ 57 व 158 – देखें – लोक न्यास अधिनियम, म.प्र. 1951, धारा 32, (गयाप्रसाद वि. म.प्र. राज्य) ...3200

भू राजस्व संहिता, म.प्र. (1959 का 20), धाराएँ 59(5), 258(2)(पपप) – भूमि के व्यपवर्तन पर भू राजस्व निर्धारण का विनियमन – नगर योजना – विभिन्न शहरों के लिए प्रीमियम की दरें नियत करने वाली अधिसूचना तारीख 24.01.2002 के नियम 14 की विधिमान्यता को मनमाना और अयुक्तियुक्त होने से चुनौती क्योंकि संहिता में उल्लिखित सुसंगत कारकों को विचार में नही लिया गया – अभिनिर्धारित – महत्वपूर्ण शहर उनकी जनसंख्या के अनुसार छोटे शहरों और नगरों से भिन्न रूप से वर्गीकृत किये गये हैं – गाँव भी भिन्न रूप से वगीकृत किये गये हैं – तदनुसार दरें विहित की गई हैं – अनुसूची युक्तियुक्त वर्गीकरण पर आधारित है और इसलिए उसमें विहित दरें मनमानी और विभेदकारी नही हैं – अपील खारिज। (राज होम्स प्रा. लि. वि. म.प्र. राज्य) SC---2749

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 117 – क्या कलेक्टर का नाम पुजारी को सूचनापत्र दिये बिना एकपक्षीय रूप में अभिलिखित किया जा सकता है – अभिनिर्धारित – एकपक्षीय रूप में कलेक्टर का नाम अभिलिखित करना विधि की दृष्टि में दोषपूर्ण है लेकिन देवता के हित में जारी रखा जाएगा – पुजारी पद पर बना रहेगा यदि अन्यथा निरर्हित होना अभिनिर्धारित नही किया गया हो। (गया प्रसाद वि. म.प्र. राज्य) ...3200

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 158(1)(बी) – नैसर्गिक न्याय – सार्वजनिक मंदिर से सम्बंधित भूमि पर भूमिस्वामी अधिकारों का दावा करने वाले व्यक्ति को सुनवाई का अवसर दिये बिना बेदखल नही किया जा सकता, यद्यपि सरकार उसे अतिचारी होना अभिकथित करती हो – कार्यवाही करने के पूर्व सूचनापत्र आवश्यक है। (गया प्रसाद वि. म.प्र. राज्य) ...3200

Land Revenue Code, M.P. (20 of 1959), Section 170-B - *Petitioner purchased agricultural land from member of aboriginal tribe after obtaining due permission from Collector - S.D.O. directed reversion of land on the ground that petitioner did not inform about sale within stipulated period - Held - Object of provision is to examine that possession of non-tribal purchaser is lawful and to ensure that tribal transferor was not defrauded - Order of S.D.O. is bad as it was passed without considering permission granted by Collector - Petition allowed.* [Ashok Kumar Dubey v. Smt. Parvati Bai]...2831

Land Revenue Code, M.P. (20 of 1959), Section 170-B - ***Settled position of law*** - *Presumption u/s 170-B(2) is only a rebuttable presumption which can duly rebuted by producing the permissian granted by Collector u/s 165(6) of Code.* [Ashok Kumar Dubey v. Smt. Parvati Bai] ...2831

Land Revenue Code, M.P. (20 of 1959), Section 247 - ***Government's title to minerals*** - *Judgment passed in Premchand's case (1965 JLJ 413) is not applicable to grant of mining leases after enactment of Mines and Minerals (Regulation and Development) Act, 1957.* [Shyam Bihari Singh v. State of M.P.] ...2820

Law of Torts - ***Medical negligence - Civil liability*** - *Mother of appellants died during T.T. operation - Suit filed on ground of negligence of doctor - Suit dismissed - Appeal filed - Held - Simple lack of care incurred civil liability - Operation was not necessary for saving life. - Lady doctor was negligent in discharing her duties in allowing an incompetent person (a dresser) to administer anaesthesia - At the time of incident appellants were aged between 11 to 2 years respectively, lost their mother - No amount of compensation can fill up the gap - Compensation of Rs.1,50,000/- with 6% interest awarded - Judgment & decree of trial court set-aside - Appeal allowed.* [Bharti (Ku.) v. State of M.P.] ...2935

Law of Torts - ***Negligence*** - *Death of 8 years girl due to contact with live electric wire while cleaning her hut from out side - M.P.E.B. has taken a plea that hut constructed illegally near pole - Trial court found that accident occurred because of negligence on the part of M.P.E.B. and awarded Rs.85,000/- with interest from date of judgment - Appeal filed for enhancement - Held - No appeal filed by M.P.E.B., challenging the findings of trial court regarding negligence - Plea cannot be looked into -- It was duty of M.P.E.B. to get hut removed - Thus, negligence of M.P.E.B. proved - Compensation enhanced by rupees One lac with interest from date of filing of suit - Appeal allowed.* [Mangibai v. M.P. Electricity Board] ...*86

Limitation - *It was a cardinal principal of law of limitation - The prescribed period, if any, of limitation starts running from the date of acquiring the knowledge of the relevant fact giving rise to the cause of action.* [Choti Bai (Smt.) v. State of M.P.] ...2331

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 170–बी – याची ने कलेक्टर से सम्यक अनुमति लेने के बाद आदिम जनजाति के सदस्य से भूमि क्रय की – उपखण्ड अधिकारी ने भूमि के प्रत्यावर्तन का निदेश इस आधार पर दिया कि याची ने विक्रय के बारे में नियत समय के भीतर सूचित नही किया – अभिनिर्धारित – उपबंध का उद्देश्य गैर जनजाति क्रेता का कब्जा विधिपूर्ण होने की जाँच करना और यह सुनिश्चित करना है कि जनजाति अंतरणकर्ता को ठगा न गया हो – याचिका मंजूर। (अशोक कुमार दुबे वि. श्रीमति पार्वती बाई) ...2831

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 170–बी – सुस्थापित विधि – धारा 170–बी(2) के अन्तर्गत उपधारणा खण्डन योग्य है जो कलेक्टर द्वारा संहिता की धारा 165(6) के अन्तर्गत प्रदान की गई अनुमति को पेश करके सम्यक रूप से खंण्डित की जा सकती है। (अशोक कुमार दुबे वि. श्रीमति पार्वती बाई) ...2831

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 247 – खनिजों पर राज्य का स्वत्व – खान और खनिज (विनियमन और विकास) अधिनियम, 1957 के अधिनियमन के पश्चात् खनन पट्टों के प्रदान किये जाने के लिए प्रेमचंद के मामले ;1965 श्रस्श्र 413द्ध में पारित निर्णय लागू नही होता। (श्याम बिहारी सिंह वि. म.प्र. राज्य) ...2820

अपकृत्य विधि – चिकित्सकीय उपेक्षा – सिविल दायित्व – अपीलार्थियों की माता की टी.टी. शल्यक्रिया के दौरान मृत्यु हुई – चिकित्सक की उपेक्षा के आधार पर वाद पेश किया – वाद खारिज – अपील पेश – अभिनिर्धारित – सावधानी की साधारण कमी से सिविल दायित्व उत्पन्न होता है – जीवन बचाने के लिए शल्यक्रिया आवश्यक नही थी – महिला चिकित्सक ने अक्षम व्यक्ति (ड्रेसर) को निश्चेतना देने के लिए अनुमत करने में उसके कर्तव्य निर्वहन में उपेक्षा की थी – घटना के समय अपीलार्थी क्रमशः 11 से 2 वर्ष के बीच थे जब उन्होंने उनकी माता को खोया – प्रतिकर की कोई राशि इस कमी को पूरा नही कर सकती – 1,50,000/– रुपये 6 प्रतिशत ब्याज सहित प्रतिकर अधिनिर्णीत किया गया – विचारण न्यायालय का निर्णय व डिक्री अपास्त – अपील मंजूर। (भारती (कुमारी) वि. म.प्र. राज्य) ...2935

अपकृत्य विधि – उपेक्षा – 8 वर्षीय बालिका की अपनी झोंपड़ी को बाहर से साफ करते समय जीवित विद्युत तार के सम्पर्क में आने से मृत्यु – म.प्र.वि.मं. ने यह आपत्ति ली कि झोंपड़ी खम्बे के निकट अवैध रूप से निर्मित की गई – विचारण न्यायालय ने पाया कि म.प्र.वि.मं. ने उपेक्षा की इससे दुर्घटना घटी और निर्णय तारीख से ब्याज सहित 85,000/– रुपये का अधिनिर्णय पारित किया – वृद्धि के लिए अपील पेश की – अभिनिर्धारित – म.प्र.वि.मं. ने विचारण न्यायालय द्वारा उपेक्षा के संबंध में दिये गये निष्कर्ष को चुनौती देते हुए कोई अपील पेश नहीं की – इस तर्क पर विचार नही किया जा सकता – यह म.प्र.वि.मं. का कर्तव्य था कि झोंपड़ी को हटवाता – इस प्रकार म.प्र.वि.मं. की उपेक्षा सिद्ध है – प्रतिकर में वाद पेश करने की तारीख से ब्याज सहित एक लाख रुपये की वृद्धि की गई – अपील मंजूर। (मांगीबाई वि. म.प्र. इलेक्ट्रीसिटी बोर्ड) ---*86

परिसीमा – यह परिसीमा विधि का मुख्य सिद्धांत था – परिसीमा की विहित कालावधि, यदि कोई हो, सुसंगत तथ्य, जिससे वादकारण उत्पन्न हुआ, की जानकारी प्राप्त करने की तारीख से चलना प्रारम्भ होती है। (छोटी बाई (श्रीमति) वि. म.प्र. राज्य) ...2331

Limitation Act, (36 of 1963) (As amended w.e.f. 01.07.2002), Section 12(3) - See - *Land Acquisition Act, 1894, Sections 26(2) & 54* [Bharat Petroleum Corporation Ltd. v. Umeshkumar] ...3169

Limitation Act (36 of 1963), Section 5, Civil Procedure Code, 1908, Section 96 - *Condonation of delay in filing appeal - Delay of 6¼ years in filing appeal - Plaintiff/respondent filed suit for declaration and perpetual injunction - Appellant engaged counsel - O.I.C. became patient of cancer and was unable to devote sufficient time - Counsel not engaged by appellant cross examined plaintiff's witnesses and subsequently pleaded No Objection on the date which was fixed for appellant's evidence - Counsel engaged by appellant, is no more, never informed about the date - Appellant came to know about ex parte decree only when the same was filed by respondent in another suit - Appeal was filed after a delay of 6¼ years - Held - Sufficient cause should be construed liberally as the justice should not be lost in technicalities - Length of delay is not relevant factor - When sufficient cause is made out, the interest of opposite party may be compensated by imposing cost - Delay of 6¼ years condoned with cost of Rs.10,000/-.* [International Association of Lions Clubs v. Dr. Jagjit Singh Khanna] ...2342

Limitation Act (36 of 1963), Section 5 - *Dismissal of State's application for condonation of delay in filing appeal - Appeal barred by 12 days - Officer-in-charge was transferred and got busy in some government work and real brother became seriously ill who subsequently died - Held - State is impersonal machinery - Sufficient ground shown for condonation of delay - Court should have taken pragmatic approach in considering the application and should have considered the law laid down by the Apex Court in objective manner - Appeal allowed and case remanded to hear appeal on merits.* [State of M.P. v. Suresh] ...2932

Limitation Act (36 of 1963), Article 58 - *Suit for declaration that proceedings held by State and Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 was null & void and prayed permanent injunction for protecting the possession - Plaintiff was very well aware of the proceedings under the Ceiling Act - Still plaintiff did not file the suit to challenge the order withtin the period of limitation - Possession was taken in the year 1982 - Suit has been filed on 23.06.2000 - It was hoplessly barred by limitation - Concurrent finding of both courts upheld by High Court.* [Kamla Bai (Smt.) v. State of M.P.] ...2925

Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhada Vargon Ke Liye Arakshan) Ahiniyam, M.P. (21 of 1994) - See - *Constitution, Article 16(4A) [77th and 85th Amendment],* [Shiv Nath Prasad v. Saran Pal Jeet Singh Tulsi] SC...3059

Lok Swasthya Evam Parivar Kalyan Chikitsa Samvida Sewa (Niyukti

परिसीमा अधिनियम, (1963 का 36) (01.07.2002 से यथासंशोधित), धारा 12(3) – देखें – भूमि अर्जन अधिनियम, 1894, धाराएँ 26(2) व 54, (भारत पेट्रोलियम कारपोरेशन लि. वि. उमेश कुमार) ...3169

परिसीमा अधिनियम (1963 का 36), धारा 5, सिविल प्रक्रिया संहिता, 1908, धारा 96 – अपील पेश करने में विलम्ब की माफी – अपील पेश करने में 6(वर्ष का विलम्ब – वादी/प्रत्यर्थी ने घोषणा और शाश्वत व्यादेश के लिए वाद पेश किया – अपीलार्थी ने वकील मुकर्रर किया – प्रभारी अधिकारी कैंसर का मरीज़ हो गया और पर्याप्त समय देने में असमर्थ हो गया – वकील जो कि अपीलार्थी द्वारा नियुक्त नही किया गया था द्वारा वादी साक्षियों का प्रति परीक्षण किया गया तथा बाद में प्रतिवादी की साक्ष्य के लिए नियत तिथि को कोई अनुदेश न होना अभिवचित किया – वकील जो कि अपीलार्थी द्वारा नियुक्त किया गया था ,ने तिथि के बारे में कभी सूचित नहीं किया और उसकी मृत्यु हो गयी – अपीलार्थी को एकपक्षीय डिक्री की जानकारी केवल तब हुई जब वह प्रत्यर्थी द्वारा दूसरे वाद में पेश की गयी – अपील 6(वर्ष के विलम्ब के बाद पेश की गई – अभिनिर्धारित – पर्याप्त कारण का अर्थ उदारता से लगाया जाना चाहिए क्योंकि तकनीकियों में न्याय की हानि नहीं होनी चाहिए – विलम्ब कितना है यह सुसंगत कारक नहीं है – जब पर्याप्त कारण का मामला बनता है तो विरोधी पक्ष का हित खर्चे अधिरोपित करके प्रतिकरित हो सकता है – 6(वर्ष का विलम्ब रु. 10,000/– के खर्च सहित माफ किया गया। (इंटरनेशनल एसोशिएशन ऑफ लायंस क्लब वि. डॉ. जगजीत सिंह खन्ना) ...2342

परिसीमा अधिनियम (1963 का 36), धारा 5 – अपील पेश करने में हुए विलम्ब को क्षमा करने के लिए राज्य का आवेदन खारिज – अपील 12 दिन समय वर्जित – प्रभारी अधिकारी का स्थानान्तरण हो गया और वह कुछ सरकारी कार्यों में व्यस्त हो गया और सगा भाई गम्भीर रूप से बीमार हो गया जिसकी बाद में मृत्यु हो गई – अभिनिर्धारित – राज्य एक अवैयक्तिक संगठन है – विलम्ब माफी के लिए पर्याप्त कारण दर्शाया गया – न्यायालय को व्यवहारिक सोच अपनाते हुए शीर्ष न्यायालय द्वारा प्रतिपादित विधि पर वस्तुनिष्ठ रूप से विचार करते हुए आवेदन का निराकरण करना था – अपील मंजूर और अपील गुणदोषों पर सुनवाई के लिए प्रतिप्रेषित। (म.प्र. राज्य वि. सुरेश) ...2932

परिसीमा अधिनियम (1963 का 36), अनुच्छेद 58 – घोषणा के लिए दावा कि राज्य और सक्षम प्राधिकारी द्वारा नगर भूमि (अधिकतम सीमा और विनियमन) अधिनियम, 1976 के अन्तर्गत की गई कार्यवाहियाँ अवैध व शून्य थीं और कब्जे की सुरक्षा के लिए स्थायी व्यादेश की प्रार्थना की गई – वादी अधिकतम सीमा अधिनियम के अन्तर्गत कार्यवाहियों से अच्छी तरह अवगत थी – फिर भी वादी ने आदेश को चुनौती देने के लिए वाद परिसीमा में पेश नही किया – कब्जा वर्ष 1982 में लिया गया था – दावा तारीख 23.06.2000 को पेश किया – यह परिसीमा से पूरी तरह वर्जित था – उच्च न्यायालय द्वारा दोनों न्यायालयों के समवर्ती निष्कर्ष की पुष्टि की गई। (कमला बाई (श्रीमति) वि. म.प्र. राज्य) ...2925

लोक सेवा (अनुसूचित जाति, अनुसूचित जनजाति और अन्य पिछड़ा वर्गों के लिये आरक्षण) अधिनियम, म.प्र. (1994 का 21)– देखें – संविधान, अनुच्छेद 16(4ए) 77वां और 85वां संशोधन,, (शिवनाथ प्रसाद वि. सरन पाल जीत सिंह तुलती) SC...3059

लोक स्वास्थ्य एवं परिवार कल्याण चिकित्सा संविदा सेवा (नियुक्ति तथा सेवा

Tatha Sewa Ki Sharten) Niyam, 2002 - See - *Constitution, Article 311(1)* [Arti Choudhari (Dr.) v. State of M.P.] ...3110

Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007, Section 51 - See - *Land Revenue Code, M.P. 1959, Sections 50, 261, 262 & 262(1)* [Choti Bai (Smt.) v. State of M.P.] ...2331

Madhyamik Shiksha Manyata Viniyam, 2005, Regulation 5(2) - ***Recognition of School*** *- Petitioner running Higher Secondary School and was granted recognition from time to time - Total area of the school less than 4000 sq.ft. - Recognition for school granted for the academic year 2007-08 with the condition that strength of the qualified staff would be fulfilled and the endowment of the fund would be made sufficient as per the requisite criteria - Abruptly recognition cancelled for the reason that area of the school less than 4000 sq.ft. - Order challenged - Held - Recognition, having been granted on the basis of the information provided by the petitioner could not have been withdrawn during the continuance of the said academic year without issuing a show cause notice to the petitioner, moreso, because students were already admitted for the academic session and they could not have been forced to withdraw from the school and seek admission in other institutions - Action of the Board in cancelling the recognition during mid of the academic session 2007-08 is, thus, violative of principles of natural justice and is not sustainable in law - Order cancelling recognition quashed - Respondent Board is directed to declare the result of students who were allowed to appear through the petitioner's school in the examination of the academic session 2007-08.* [Nanakram Mukati v. The Board of Secondary Education, M.P. Bhopal] ...3103

Medical and Dental Post Graduate Course Entrance Examination Rules, M.P. 2005, Rule 21(4) - See - *Chikitsa Shiksha Niyantran Adhiniyam, M.P., 1973, Section 10* [Medical Council of India v. Dr. Teena Khatri] ...2799

Medical and Dental Post Graduate Course Entrance Examination Rules, 2007, Rule 20(2) - ***Counseling*** *- Petitioner alleged that provisions of Rule 20(2) were not complied with as news regarding counseling was not properly circulated - Held - Respondent had circulated information with regard to the second counseling in all leading newspapers having the effective public circulation - Steps were taken for publication of intimation relating to second counseling in the popular Hindi and English newspapers at Division and District level - Information was also flashed on Akashwani in the Radio and Doorshan in the television - Rule complied with - Petition dismissed.* [Ruchir Kumar Jain v. State of M.P.] ...2847

Medical and Dental Post Graduate Course Entrance Examination Rules, M.P. 2008 - *If any seat falls vacant on or before 31st May, 2008 in any Medical/Dental College in any subject, the name of such candidate shall*

की शर्तें) नियम, 2002 – देखें – संविधान, अनुच्छेद 311(1), (आरती चौधरी (डॉ.) वि. म. प्र. राज्य) ...3110

मध्य भारत भू–आगम और कृषकाधिकार विधान, संवत् (2007 का), धारा 51 – देखें – भू राजस्व संहिता, म.प्र. 1959, धाराएँ 50, 261, 262 व 262(1) (छोटी बाई (श्रीमति) वि. म.प्र. राज्य) ...2331

माध्यमिक शिक्षा मान्यता विनियम, 2005, विनियम 5(2) – स्कूल की मान्यता – याची उच्चतर माध्यमिक विद्यालय चला रहा और समय–समय पर मान्यता दी गई – विद्यालय का कुल क्षेत्रफल 4000 वर्गफीट से कम – स्कूल के लिए मान्यता शैक्षणिक वर्ष 2007–08 के लिए इस शर्त के साथ प्रदान की गई कि अपेक्षित मानदण्डों के अनुसार योग्य स्टाफ की पूर्ति की जायेगी और निधि का विन्यास पर्याप्त किया जायेगा – आकस्मिक रूप से मान्यता इस कारण रद्द की गई कि विद्यालय का क्षेत्रफल 4000 वर्गफीट से कम है – आदेश को चुनौती दी गई – अभिनिर्धारित – मान्यता, याची द्वारा प्रदत्त जानकारी के आधार पर प्रदान की जाने से याची को कारण बताओ सूचनापत्र जारी किये बिना उक्त शैक्षणिक वर्ष के जारी रहने के दौरान वापस नही ली जा सकती थी, इसके अतिरिक्त क्योंकि छात्रों को शैक्षणिक सत्र के लिए प्रवेश दिया जा चुका था और उन्हें स्कूल से अलग हो जाने और अन्य संस्थानों में प्रवेश लेने के लिए विवश नही किया जा सकता था – इस प्रकार शैक्षणिक सत्र 2007–08 के मध्य में मान्यता रद्द करने में मण्डल का कृत्य नैसर्गिक न्याय के सिद्धांतों का उल्लंघन है और विधि में स्थिर रखे जाने योग्य नही है – मान्यता रद्द करने का आदेश अभिखण्डित – प्रत्यर्थी मण्डल को उन छात्रों का परिणाम घोषित करने के लिए निदेश दिया गया जिन्हें शैक्षणिक सत्र 2007–08 की परीक्षा में याची के विद्यालय के माध्यम से बैठने की इजाजत दी गई थी। (नानकराम मुकाती वि. द बोर्ड ऑफ सेकन्डरी एजूकेशन, एम.पी., भोपाल) 3103

चिकित्सा और दंत स्नातकोत्तर पाठ्यक्रम प्रवेश परीक्षा नियम, म.प्र. 2005, नियम 21(4) – देखें – चिकित्सा शिक्षा नियंत्रण अधिनियम, म.प्र., 1973, धारा 10 (मेडीकल कांउसिल ऑफ इंडिया वि. डॉ. टीना खत्री) ...2799

चिकित्सा और दंत स्नातकोत्तर पाठ्यक्रम प्रवेश परीक्षा नियम, म.प्र. 2007, नियम 20(2) – काउंसिलिंग – याची ने कथित किया कि नियम 20(2) का पालन नही किया गया क्योंकि काउंसिलिंग के संबंध में समाचार उचित रूप से परिचालित नही किया गया – अभिनिर्धारित – प्रत्यर्थी ने द्वितीय काउंसिलिंग के संबंध में जानकारी पर्याप्त लोक प्रचालन रखने वाले सभी मुख्य समाचार–पत्रों में परिचालित की थी – द्वितीय काउंसिलिंग से संबंधित सूचना के सम्भाग एवं जिला स्तर पर लोकप्रिय हिन्दी और अंग्रेजी समाचार–पत्रों में प्रकाशन के लिए आवश्यक कार्यवाही की गई – जानकारी रेडियो में आकाशवाणी पर और टेलीविजन में दूरदर्शन पर भी दी गई – नियम का पालन किया गया – याचिका खारिज। (रूचिर कुमार जैन वि. म.प्र. राज्य) ...2847

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be considered on the basis of merit at the time of allotment of vacancies arising due to any reason for admission of the said category - None of the petitioners had availed "opt for waiting" - Hence, there cannot be any grievance. [Vinod Kumar (Dr.) v. State of M.P.] ...3090

Medical and Dental Post Graduate Course Entrance Examination Rules, M.P., 2008, Rule 1.20.9 - *Constitutional validity of Rule 1.20.9 challenged as illegal and arbitrary* - *The rationale behind the rule is that in service quota seats should be filled by in service candidates first - In-service candidates and non-service candidates forms different category - In case of non-availability of eligible candidate in service category - The seats in service category cannot be allotted to corresponding category candidate of non-service category - Rule 1.20.9 not ultra vires - Petition dismissed.* [Ramu Thakur (Dr.) v. M.P. Professional Examination Board] ...2285

Medical and Dental Post Graduation Course Entrance Examination Rules, M.P. 2008 - See - *Medical Council Act, 1956, Sections 10A & 11(2),* [Vinod Kumar (Dr.) v. State of M.P.] ...3090

Medical Council Act (102 of 1956), Sections 10A & 11(2), Pre P.G. Entrance Examination for Medical & Dental Post Graduate Courses, 2008, Medical and Dental Post Graduation Course Entrance Examination Rules, M.P. 2008 - *Admission* - *Petitioner applied for admission in P.G. course as a service candidate - Counselling for unrecognized seats not done in compliance of learned Single Judge order - Action challenged that counselling of the unrecognized seats is done for last many years and the order of learned Single Judge has been dislodged in the Writ Appeal - Held - Filling of unrecognized seat without proper infrastructural facilities is not permissible in view of rules made by Medical Council of India - It is the Medical Council / Dental Council which can prescribe the number of students to be admitted to medical/dental courses in a medical college or institution - The universities and the State Government have no authority to allow increase in the number of admissions in the medical colleges - The Medical Council is the principal body to lay down conditions for recognition of medical colleges which would include the fixing of intake for admission to a medical college.* [Vinod Kumar (Dr.) v. State of M.P.] ...3090

Mineral Conservation and Development Rules, 1988, Rule 23-F - *Financial Assurance* - *Financial assurance is different from royalty and security - Cannot be termed unreasonable or arbitrary.* [S.N.S. (Minerals) Ltd., Maihar (M/s.) v. Union of India] ...2565

Mines and Minerals (Regulation and Development) Act (67 of 1957), Section 18, Mineral Conservation and Development Rules, 1988, Rule 23-F - Validity of Rule 23-F - Validity of Rule 23-F challenged - *Mining lease holder has to take rehabilitation and reclamation process to bring back*

से हुई रिक्तियों के आबंटन के समय मेरिट के आधार पर विचार किया जायेगा – किसी भी याची ने "प्रतीक्षा के विकल्प" का लाभ नही उठाया – इसलिए कोई शिकायत नही हो सकती है। (विनोद कुमार (डॉ.) वि. म.प्र. राज्य) ...3090

चिकित्सा और दन्त स्नातकोत्तर पाठ्यक्रम प्रवेश परीक्षा नियम, म.प्र., 2008, नियम 1.20.9 – नियम 1.20.9 मनमाना और अवैध होने से संवैधानिक विधिमान्यता को चुनौती – नियम का तर्काधार यह है कि सेवा कोटे की सीटें सेवा उम्मीदवारों के द्वारा पहले भरी जायेंगी – सेवा उम्मीदवार और गैर सेवा उम्मीदवार अलग वर्ग बनाते हैं – सेवा वर्ग में अर्हता रखने वाले उपलब्ध न होने के मामले में – सेवा वर्ग की सीटें गैर सेवा वर्ग के तत्सम वर्ग को आबंटित नहीं की जा सकतीं – नियम 1.20.9 अधिकारातीत नहीं – याचिका खारिज। (रामू ठाकुर (डॉ.) वि. एम.पी. प्रोफेशनल एग्जामिनेशन बोर्ड) ...2285

चिकित्सा और दंत स्नातकोत्तर पाठ्यक्रम प्रवेश परीक्षा नियम, म.प्र. 2008 – देखे – चिकित्सा परिषद् अधिनियम, 1956, धाराएँ 10ए व 11(2), (विनोद कुमार (डॉ.) वि. म.प्र. राज्य) ...3090

चिकित्सा परिषद् अधिनियम (1956 का 102), धाराएँ 10ए व 11(2), चिकित्सा और दंत स्नातकोत्तर पाठ्यक्रमों के लिए पूर्व स्नातकोत्तर प्रवेश परीक्षा, 2008, चिकित्सा और दंत स्नातकोत्तर पाठ्यक्रम प्रवेश परीक्षा नियम, म.प्र. 2008 – प्रवेश – याची ने सेवा अभ्यर्थी के रूप में स्नातकोत्तर पाठ्यक्रम में प्रवेश के लिए आवेदन किया – विद्वान एकल न्यायाधीश के आदेश के अनुपालन में अमान्यताप्राप्त सीटों के लिए काउंसिलिंग नहीं की गई – कृत्य को चुनौती दी गई कि अमान्यताप्राप्त सीटों की काउंसिलिंग पिछले कई सालों से की गई है और विद्वान एकल न्यायाधीश के आदेश का रिट अपील में विस्थापन कर दिया गया है – अभिनिर्धारित – भारतीय चिकित्सा परिषद् द्वारा बनाये गये नियमों को दृष्टि में रखते हुए समुचित अवसंरचनात्मक सुविधाओं के बिना अमान्यताप्राप्त सीट का भरना अनुज्ञेय नही है – चिकित्सा परिषद् / दंत परिषद् चिकित्सा महाविद्यालय या संस्थान में चिकित्सा / दंत पाठ्यक्रमों में प्रविष्ट किये जाने वाले छात्रों की संख्या विहित कर सकती है – विश्वविद्यालय और राज्य सरकार को चिकित्सा महाविद्यालयों में प्रवेश की संख्या में वृद्धि की अनुमति देने का कोई प्राधिकार नही है – चिकित्सा महाविद्यालयों की मान्यता के लिए शर्तें निर्धारित करने के लिए चिकित्सा परिषद् प्रमुख निकाय है जिसमें किसी चिकित्सा महाविद्यालय में प्रवेश के लिए ग्रहण नियत करना सम्मिलित होगा। (विनोद कुमार (डॉ.) वि. म.प्र. राज्य) ...3090

खनिज संरक्षण और विकास नियम, 1988, नियम 23–एफ – वित्तीय आश्वासन – वित्तीय आश्वासन रॉयल्टी और प्रतिभूति से भिन्न है – अयुक्तियुक्त या मनमाना नही माना जा सकता। (एस.एन.एस (मिनिरल्स) लि. मैहर (मे.) वि. यूनियन ऑफ इंडिया) ...2565

खान और खनिज (विनियमन और विकास) अधिनियम (1957 का 67), धारा 18, खनिज संरक्षण और विकास नियम, 1988, नियम 23–एफ – नियम 23–एफ की विधिमान्यता – नियम 23–एफ की विधिमान्यता को चुनौती दी गई – खनन पट्टा धारक को खनन क्षेत्र को जहाँ तक संभव हो उसके मूल आकार में वापस लाने के लिए पुनरुद्धार और उद्धार

mining area as far as possible to its original shape - Section 18 of the Act gives power to Central Government to make rules for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operations - Rule 23-F is a measure introduced for protection of environment - Rule 23-F is intra vires of Section 18 of the Act. [S.N.S. (Minerals) Ltd., Maihar (M/s.) v. Union of India] ...2565

Mines and Minerals (Regulation and Development) Act (67 of 1957), Section 24A - *Rights and liabilities of a holder of prospecting licence or mining lease - Whether consent of owner of private land before grant of mining lease to third person is or is not required - Held - Consent of owner of private land in respect of which mining lease is sought to be given by Government is not mandatory - Reference answered accordingly.* [Shyam Bihari Singh v. State of M.P.] ...2820

Motor Vehicles Act (4 of 1939), Sections 68-B, 57(2)(3), Motor Vehicles Act, 1988, Section 80 - ***Permit*** - *While granting new permit as per the provision of Act of 1988 after receiving application prior publication of notice and further notice to the operator who have been plying their vehicles on the route is necessary or not - Held - Not necessary - Petition allowed.* [Ganesh Prasad Madan v. State Transport Appellate Tribunal] ...2601

Motor Vehicles Act (59 of 1988), Section 15 - ***Renewal of driving license*** - *Accident occurred on 13.06.2000 - License of driver expired on 02.02.1999 - Application for renewal of license made more than 30 days after the date of expiry - License renewed on 23.06.2000 - Held - Driver was not possessing valid license at the time of accident - Insurance Company not liable.* [Kalu v. Bansilal] ...*78

Motor Vehicles Act (59 of 1988), Sections 64, 65 & 41, Motor Vehicles Rules, Central, 1989, Rule 81, Motor Vehicles Rules, M.P., 1994, Rule 55-A - *Fixation of higher fee for registration with an option to seek reservation of particular registration number - Validity - Application for allotment of particular registration number for motorcycle rejected as requisite fee for allotment of particular number was not paid - Held - Power to prescribe fee for registration of motor vehicle is conferred on Central Government - Notification issued by State Govt. prescribing fee to be charged for registration of motor vehicle by means of reservation ultra vires - Notification quashed - Respondents directed to reconsider application of petitioner - Petition allowed.* [Rakesh Sethi v. State of M.P.] ...2297

Motor Vehicles Act, (59 of 1988), Section 80 - See - *Motor Vehicles Act, 1939, Sections 68-B, 57(2)(3)* [Ganesh Prasad Madan v. State Transport Appellate Tribunal] ...2601

Motor Vehicles Act (59 of 1988), Section 96(2)(b) - ***Liability of the Insurance Company - Agriculture Purpose*** - *The word "agricultural purpose"*

की प्रक्रिया ग्रहण करनी पड़ती है – अधिनियम की धारा 18 केन्द्रीय सरकार को, किसी प्रदूषण को, जो खनिज खोज या खनन संक्रियाओं के द्वारा कारित किया जाए, निवारित या नियंत्रित करने एवं पर्यावरण के संरक्षण के लिए नियम बनाने की शक्ति प्रदान करती है – नियम 23–एफ पर्यावरण के संरक्षण के लिए लाया गया एक उपाय है – नियम 23–एफ अधिनियम की धारा 18 के शक्त्याधीन है। (एस.एन.एस (मिनिरल्स) लि. मैहर (मे.) वि. यूनियन ऑफ इंडिया) ...2565

खान और खनिज (विनियमन और विकास) अधिनियम (1957 का 67), धारा 24ए – पूर्वेक्षण अनुज्ञप्ति या खनन पट्टा धारक के अधिकार और दायित्व – क्या तृतीय व्यक्ति को खनन पट्टे के अनुदान के पूर्व निजी भूमि के स्वामी की सहमति अपेक्षित है या नही – अभिनिर्धारित – निजी भूमि, जिसके संबंध में सरकार द्वारा खनन पट्टा दिया जाना चाहा गया है, के स्वामी की सहमति आज्ञापक नही है – रिफरेंस तदनुसार उत्तरित। (श्याम बिहारी सिंह वि. म.प्र. राज्य) ...2820

मोटर यान अधिनियम (1939 का 4), धाराएँ 68–बी, 57(2)(3), मोटर यान अधिनियम, 1988, धारा 80 – अनुज्ञापत्र – नवीन अनुज्ञापत्र देते समय 1988 के अधिनियम के उपबंध के अनुसार आवेदन प्राप्त करने के पश्चात् सूचनापत्र का पूर्व प्रकाशन और संचालक, जो उनके वाहन उस मार्ग पर चला रहे हों, को सूचनापत्र आवश्यक है या नही – अभिनिर्धारित – आवश्यक नही – याचिका मंजूर। (गणेश प्रसाद मदन वि. स्टेट ट्रांसपोर्ट अपीलियेट ट्रिब्यूनल) ...2601

मोटर यान अधिनियम (1988 का 59), धारा 15 – ड्रायविंग लायसेंस का नवीनीकरण – दुर्घटना 13.06.2000 को घटित हुई – ड्रायवर का लायसेंस 02.02.1999 को समाप्त हुआ – लायसेंस के नवीनीकरण के लिए आवेदन समाप्ति की तारीख के 30 दिन से अधिक समय बाद दिया गया – लायसेंस 23.06.2000 को नवीनीत हुआ – अभिनिर्धारित – ड्रायवर के पास दुर्घटना के समय वैध लायसेंस नही था – बीमा कम्पनी दायी नही। (कालू वि. बंशीलाल) ...*78

मोटर यान अधिनियम (1988 का 59), धाराएँ 64, 65 व 41, मोटर यान नियम, केन्द्रीय, 1989, नियम 81, मोटर यान नियम, म.प्र., 1994, नियम 55–ए – विशिष्ट पंजीयन क्रमांक का आरक्षण चाहने के विकल्प के साथ पंजीयन के लिए उच्चतर शुल्क का नियत किया जाना – विधिमान्यता – मोटरसायकल के लिए विशिष्ट पंजीयन क्रमांक के आबंटन के लिए आवेदन निरस्त क्योंकि विशिष्ट क्रमांक के आबंटन हेतु आवश्यक शुल्क अदा नहीं किया – अभिनिर्धारित – मोटर यान के पंजीयन के लिए शुल्क विहित करने की शक्ति केन्द्र सरकार को प्रदत्त है – राज्य सरकार द्वारा आरक्षण के माध्यम से मोटर यान के पंजीयन के लिए प्रभारित शुल्क विहित करते हुए जारी अधिसूचना अधिकारातीत – अधिसूचना अभिखंडित – प्रत्यर्थियों को याची के आवेदन पर पुनर्विचार करने को निदेशित किया – याचिका मंजूर। (राकेश सेठी वि. म.प्र. राज्य) ...2297

मोटर यान अधिनियम, (1988 का 59), धारा 80 – देखें – मोटर यान अधिनियम 1939, धाराएँ 68–बी, 57(2)(3), (गणेश प्रसाद मदन वि. स्टेट ट्रांसपोर्ट अपीलियेट ट्रिब्यूनल)...2601

मोटर यान अधिनियम (1988 का 59), धारा 96(2)(बी) – बीमा कम्पनी का दायित्व – कृषिक प्रयोजन – शब्द "कृषिक प्रयोजन" अधिनियम में परिभाषित नही है – वाहन

is not defined in the Act - The condition with respect to use of vehicle for agricultural purpose is only in the policy - If the passengers are carried in a tractor trolley then due to breach of the condition of the policy, Insurance Company may not escape the liability. [National Insurance Company Ltd. v. Vidhyabai] ...3270

Motor Vehicles Act, (59 of 1988), Sections 140, 143 & 167 - See - *Workmen's Compensation Act 1923, Section 30* [Rajani Agrawal (Smt.) v. Ramswaroop] ...2384

Motor Vehicles Act (59 of 1988), Section 147 - *Liability of Insurance Company* - *Deceased travelling in a tractor which was insured under farmer package policy - Insurance Company not liable for payment of compensation - Amount if any paid by Insurance Company shall not be recovered from claimants but shall be recovered from insured and driver.* [Kamlabai v. Kamlesh] ...*93

Motor Vehicles Act (59 of 1988), Section 166 - *Compensation* - *Appellants are brothers of deceased - Although appellants were not financially dependent on deceased but it cannot be denied that in number of respect they were dependent on the deceased and entitled for compensation - Since appellants are financially well settled Rs. 1,50,000/- compensation awarded.* [Gajanand v. Virendra Singh] ...*72

Motor Vehicles Act (59 of 1988), Section 166 - *Compensation* - *Composite Negligence* - *Deceased was travelling in Matador which was hit by truck - In claim case truck driver remained ex-parte - Tribunal dismissed the petition on the ground that appellant has not impleaded owner & insurer of Matador - Held - Even if it is assumed that driver of Matador was negligent then too so far as appellants are concerned it was a case of composite negligence and claim petition cannot be dismissed for non-impleading owner, driver and insurer of Matador - Appeal allowed.* [Gajanand v. Virendra Singh] ...*72

Motor Vehicles Act (59 of 1988), Section 166 - *Composite negligence* - *Appellants are tempo driver and owner - Claimants travelling in tempo - One truck by towing another truck came from opposite side in rash and negligent manner - Truck which was towed came from its side and collided with tempo - Tribunal held the case to be of composite negligence and saddled 50% liability on appellants - Held - No evidence adduced on behalf of truck driver, owner or insurer to prove any fault and negligence on the part of tempo driver - Injured and eye witnesses have proved with all probabilities that accident was the cause and consequence of act of offending truck - Appellants exonerated to indemnify the liability of awarded sum to claimants - Appeal allowed.* [Badda @ Barik Rao v. Kantibai] ...3172

Motor Vehicles Act (59 of 1988), Section 166, Evidence Act, 1872, Section 102 - *Burden of Proof* - *Eye witness lodged FIR that a truck had hit*

का प्रयोग कृषिक प्रयोजन के लिए करने की शर्त केवल पॉलिसी में है – यदि ट्रेक्टर ट्रॉली में यात्रियों को ले जाया जाता है तब पॉलिसी की शर्त भंग होने के कारण बीमा कम्पनी दायित्व से नही बच सकती। (नेशनल इंश्योरेंस कंपनी लि. वि. विद्याबाई) ...3270

मोटर यान अधिनियम, (1988 का 59), धाराएँ 140, 143, 167 – देखें – कर्मकार प्रतिकर अधिनियम 1923, धारा 30 (रजनी अग्रवाल (श्रीमति) वि. रामस्वरूप) ...2384

मोटर यान अधिनियम (1988 का 59), धारा 147 – बीमा कम्पनी का दायित्व – मृतक ट्रेक्टर में यात्रा कर रहा था जो किसान पैकेज पॉलिसी के अन्तर्गत बीमा.त था – बीमा कम्पनी प्रतिकर के संदाय के लिए दायी नही – बीमा कम्पनी ने यदि कोई राशि प्रदत्त की हो, दावेदारों से वसूल नही की जाएगी बल्कि पॉलिसी धारक या चालक से वसूली की जाएगी। (कमलाबाई वि. कमलेश) ---*93

मोटर यान अधिनियम (1988 का 59), धारा 166 – प्रतिकर – अपीलार्थी मृतक के भाई हैं – यद्यपि अपीलार्थी मृतक पर वित्तीय रूप से आश्रित नही थे, किन्तु इससे इनकार नही किया जा सकता है कि वे अनेक विषयों में मृतक पर आश्रित थे और प्रतिकर के हकदार हैं – चूंकि अपीलार्थी वित्तीय रूप से सम्पन्न हैं, 1,50,000/– रुपये प्रतिकर अधिनिर्णीत। (गजानन्द वि. वीरेन्द्र सिंह) ---*72

मोटर यान अधिनियम (1988 का 59), धारा 166 – प्रतिकर – संयुक्त उपेक्षा – मृतक मेटाडोर में यात्रा कर रहा था जिसे ट्रक ने टक्कर मारी – दावा प्रकरण में ट्रक चालक एकपक्षीय रहा – अधिकरण ने याचिका इस आधार पर खारिज की कि अपीलार्थी ने मेटाडोर के स्वामी और बीमाकर्ता को पक्षकार नहीं बनाया है – अभिनिर्धारित – यदि यह मान भी लेवें कि मेटाडोर का चालक उपेक्षावान था, तब भी जहाँ तक अपीलार्थियों का संबंध है यह मामला संयुक्त उपेक्षा था और दावा याचिका मेटाडोर के स्वामी, चालक और बीमाकर्ता को पक्षकार न बनाये जाने के कारण खारिज नहीं की जा सकती है – अपील मंजूर। (गजानन्द वि. वीरेन्द्र सिंह) ---*72

मोटर यान अधिनियम (1988 का 59), धारा 166 – संयुक्त उपेक्षा – अपीलार्थी टेम्पो चालक और स्वामी हैं – दावेदार टेम्पो में यात्रा कर रहे थे – अन्य ट्रक द्वारा खींचा जा रहा ट्रक उतावलेपन और उपेक्षापूर्ण तरीके से विपरीत दिशा से आया – ट्रक जो खींचा जा रहा था उसकी तरफ से आया और टेम्पो से टकरा गया – अधिकरण ने मामला संयुक्त उपेक्षा का होना अभिनिर्धारित किया और अपीलार्थियों पर 50 प्रतिशत दायित्व डाला – अभिनिर्धारित – टेम्पो चालक का कोई दोष और उपेक्षा साबित करने के लिए ट्रक चालक, स्वामी या बीमाकर्ता की ओर से कोई साक्ष्य पेश नही की गई – क्षतिग्रस्त और प्रत्यक्षदर्शी साक्षियों ने सभी अधिसंभाव्यताओं के साथ साबित किया कि दुर्घटना दोषी ट्रक के कार्य का कारण और परिणाम थी – अपीलार्थियों को अधिनिर्णीत रकम के दायित्व की दावेदारों को क्षतिपूर्ति करने से विमुक्त किया गया – अपील मंजूर। (बड्डा उर्फ बरिक राव वि. कांती बाई) ...3172

मोटर यान अधिनियम (1988 का 59), धारा 166, साक्ष्य अधिनियम, 1872, धारा 102 – सबूत का भार – प्रत्यक्षदर्शी साक्षी ने एफआईआर दर्ज कराई कि ट्रक ने मोटरसायकल

motorcycle killing the driver - Police filed charge sheet that involvement of truck not proved however Bus had caused the accident - Driver and owner of bus remained ex parte before Claims Tribunal - Tribunal passed award in favour of claimants - Held - It was the duty of claimants to examine the I.O. to prove that on what particular evidence he recorded a finding that the truck was not involved in the accident and in fact the bus has caused the accident - Non-examination of I.O. and first informant would give a dent to the claim. [National Insurance Company Ltd. v. Smt. Setubai] ...2367

Motor Vehicles Act (59 of 1988), Section 166, Rules of the Road Regulations, 1989, Rule 20(3), (4) - *Negligence - Towing - Deceased who was driving motorcycle dashed with truck which was being towed by another truck - Drivers and owners of both the trucks remained ex parte - Burden of proof of observance of Rule 20 was on driver, owner and insurer of trucks - No evidence that the speed of truck was not exceeding 24 Kms/hrs and the distance between both the trucks was at no time exceed 5 meters - No written signboard mentioning the words 'ON TOW' on the rear of the truck being towed as per Rule 20(3) - Deceased was not negligent - Appeal allowed.* [Meera (Smt.) v. Jolly Road Lines] ...3273

Motor Vehicles Act (59 of 1988), Section 170, Civil Procedure Code, 1908, Order 41 Rule 33 - *Claims tribunal awarded compensation of Rs.13,32,000/- against the Owner & Driver - Claimants filed appeal for enhancement of compensation and saddling liability of Insurance Company also - Insurance Company contended that the compensation is excessive - High Court reduced compensation upto Rs.6,96,000/- - Held - No appeal filed by Driver or Owner - Insurance Company would have no right to question quantum of compensation in absence of any leave in terms of Section 170 of Act - Legally impermissible for Insurance Company to question a finding of fact taking umbrage under Order 41 Rule 33 of Code - Order 41 Rule 33 of Code was not applicable - Reduction of compensation erroneous - Appeal allowed.* [Samundra Devi v. Narendra Kaur] SC ...2743

Motor Vehicles Act (59 of 1988), Section 173, Civil Procedure Code, 1908, Order 41 Rule 22 - *Motor accident caused by rash and negligent driving by driver of mini truck - Driver was holding license to drive LMV - Held - Mini truck squarely falls in category of LMV - Driver had valid license - Insurance Company held liable - Cross-objection of claimants allowed and compensation enhanced by applying proper multiplier.* [United India Insurance Co. Ltd., Indore v. Smt. Ramtubai] ...3251

Motor Vehicles Act (59 of 1988), Section 173 - *Insurance Company has already paid a sum of Rs.30,000/- to the claimant as per award - Claimant filed appeal for enhancement - High Court awarded further sum of Rs.25,000/- - Insurance Company prayed before the High Court that at the time of accident*

को टक्कर मारकर उसके चालक की मृत्यु कारित की – पुलिस ने आरोप–पत्र पेश किया कि ट्रक का अन्तर्ग्रस्त होना साबित नहीं तथापि बस ने दुर्घटना कारित की – दावा अधिकरण के समक्ष बस का चालक और स्वामी एकपक्षीय रहे – अधिकरण ने दावेदारों के पक्ष में अवार्ड पारित किया – अभिनिर्धारित – यह दावेदारों का कर्तव्य था कि वे अनुसंधान अधिकारी का परीक्षण यह सिद्ध करने करने के लिए कराते कि किस विशिष्ट साक्ष्य पर उसने यह निष्कर्ष अभिलिखित किया कि ट्रक दुर्घटना में शामिल नही था और वास्तव में बस ने दुर्घटना कारित की – अनुसंधान अधिकारी और प्रथम सूचनादाता का परीक्षण न कराना दावे को क्षति पहुँचाता है। (नेशनल इंश्योरेंस कंपनी लि. वि. श्रीमति सेतुबाई) ...2367

मोटर यान अधिनियम (1988 का 59), धारा 166, सड़क विनियमन के नियम, 1989, नियम 20(3) व (4) – उपेक्षा – खींचना – मृतक जो मोटरसाइकिल चला रहा था ट्रक से टकरा गया, जिसे अन्य ट्रक द्वारा खींचा जा रहा था – दोनों ट्रकों के चालक और स्वामी एकपक्षीय रहे – नियम 20 के अनुपालन के सबूत का भार ट्रकों के चालक, स्वामी और बीमाकर्ता पर था – कोई साक्ष्य नही कि ट्रक की गति 24 किमी/घण्टा से अधिक नही थी और दोनों ट्रकों के बीच किसी भी समय 5 मीटर से अधिक की दूरी नही रही – जो ट्रक खींचा जा रहा था उसके पीछे नियम 20(3) के अनुसार 'ON TOW' लिखा हुआ साइन बोर्ड नही था – मृतक उपेक्षावान नही था – अपील मंजूर। (मीरा (श्रीमति) वि. जॉली रोड लाइंस) ...3273

मोटर यान अधिनियम (1988 का 59), धारा 170, सिविल प्रक्रिया संहिता, 1908, आदेश 41 नियम 33 – दावा अधिकरण ने 13,32,000/– रुपये का अधिनिर्णय स्वामी और चालक के विरुद्ध पारित किया – दावेदारों ने प्रतिकर में वृद्धि और बीमा कम्पनी पर भी दायित्व आरोपित करने के लिए अपील पेश की – बीमा कम्पनी ने यह प्रतिवाद किया कि प्रतिकर की राशि अत्यधिक है – उच्च न्यायालय ने प्रतिकर घटाकर 6,96,000/– रुपये किया – अभिनिर्धारित – चालक या स्वामी द्वारा कोई अपील पेश नही की गई – बीमा कम्पनी को अधिनियम की धारा 170 के निबंधनों के अनुसार किसी अनुमति के अभाव में प्रतिकर की मात्रा को प्रश्नगत करने का कोई अधिकार नही – बीमा कम्पनी के लिए संहिता के आदेश 41 नियम 33 का सहारा ;नउइतंहमद्ध लेते हुए तथ्य के निष्कर्ष को प्रश्नगत करना, वैध रूप से अननुज्ञेय है – संहिता का आदेश 41 नियम 33 लागू होने योग्य नही – प्रतिकर घटाना त्रुटिपूर्ण – अपील मंजूर। (समुन्द्रा देवी वि. नरेन्द्र कुमार) SC ...2743

मोटर यान अधिनियम (1988 का 59), धारा 173, सिविल प्रक्रिया संहिता, 1908, आदेश 41 नियम 22 – मोटर दुर्घटना मिनी ट्रक के चालक द्वारा उतावले और उपेक्षापूर्ण चालन द्वारा कारित की गई – चालक हल्के मोटर यान का लायसेंस धारित किये था – अभिनिर्धारित – मिनी ट्रक पूर्ण रूप से हल्के मोटर यान की श्रेणी में आता है – चालक के पास वैध लायसेंस था – बीमा कम्पनी दायी – दावेदारों के प्रत्याक्षेप मंजूर और उचित गुणक लागू करके प्रतिकर में वृद्धि की गई। (यूनाईटेड इंडिया इंश्योरेंस कं. लि., इंदौर वि. श्रीमति रमतूबाई) 3251

मोटर यान अधिनियम (1988 का 59), धारा 173 – बीमा कम्पनी ने अवार्ड के अनुसार 30,000/– रुपये की राशि दावेदार को पूर्व में ही अदा कर दी थी – दावेदार ने वृद्धि के लिए अपील पेश की – उच्च न्यायालय ने 25,000/– रुपये की अतिरिक्त राशि अधिनिर्णीत की – बीमा कम्पनी ने उच्च न्यायालय के समक्ष प्रार्थना की कि दुर्घटना के समय ड्रायवर के पास वैध और प्रभावी ड्रायविंग

driver was not possessing valid & effective driving licence, therefore, a right of recovery be given to Insurance Company for the amount which was awarded by the tribunal and paid to claimant - Held - Since no appeal or cross-objection has been filed by Insurance Company - The prayer cannot be accepted - However, Insurance Company shall pay enhanced amount of Rs.25,000/- to claimant and shall have an option to recover the amount from owner & driver. [Kalu v. Bansilal] ...*78

Motor Vehicles Act (59 of 1988), Section 173(1) - *Exemption from deposit amount in compliance of requirement of proviso to Section 173(1) - Award of tribunal fixing liability against owner, driver & insurer - However, tribunal permitted the insurer to recover the amount from the owner - Insurer deposited entire amount in tribunal - Appeal by owner and prayed for exemption from depositing the amount in compliance of proviso of Section 173(1) - Held - There is no provision in the Act to grant such exemption - Appellant/owner can not claim benefit of deposit made by insurer.* [Chandrakanta Bhandari (Smt.) v. Manohar Lal] ...2373

Motor Vehicles Act (59 of 1988), Section 173(1) Proviso - *Interpretation* - *When the language of statute is plain and unambiguous, effect has to be given to such words without reading anything more in them - If the intention of legislature was to provide exemption from deposit then the same would have found place in the section itself.* [Chandrakanta Bhandari (Smt.) v. Manohar Lal] ...2373

Motor Vehicles Act (59 of 1988), Sections 173 & 96(2)(b) - *Liability of the Insurance Company* - *Driver having a valid license carrying passengers in a tractor trolley insured for agriculture purpose without the knowledge of the owner - Insurance Company alleging breach of policy - Held -Breach means infringement or violation of a promise or obligation - As such, the Insurance Company will have to establish that the insured was guilty of an infringement or violation of a promise - The insurer has also to satisfy the tribunal or the court that such violation or infringement on the part of the insurer was wilful - No evidence on record that the passengers, who were carried in the tractor trolley, were carried with due knowledge or permission of the owner -Insurance Company cannot repudiate its statutory liability.* [National Insurance Co. Ltd. v. Vidhyabai] ...3270

Motor Vehicles Rules, Central, 1989, Rule 81 - See - *Motor Vehicles Act 1988, Sections 64, 65 & 41* [Rakesh Sethi v. State of M.P.] ...2297

Motor Vehicles Rules, M.P., (of 1994), Rule 55-A - See - *Motor Vehicles Act 1988, Sections 64, 65 & 41* [Rakesh Sethi v. State of M.P.]...2297

Municipal Corporation Act, M.P. (23 of 1956), Section 307(5) - *Power to require removal or alteration of work not in conformity with byelaws or any scheme or any other requirement - The issue for reference before the*

लायसेंस नही था, इसलिए बीमा कम्पनी को उस राशि की वसूली का अधिकार दिया जाए जो अधिकरण द्वारा अधिनिर्णीत की गई और दावेदार को अदा की गई – अभिनिर्धारित – चूंकि बीमा कम्पनी द्वारा कोई अपील या प्रत्याक्षेप पेश नही किये गये – प्रार्थना स्वीकार नही की जा सकती – तथापि, बीमा कम्पनी 25,000/– रुपये की बढ़ी हुई राशि दावेदार को अदा करेगी और उसे स्वामी तथा ड्रायवर से वसूल करने का विकल्प रहेगा। (कालू वि. बंशीलाल) ...*78

मोटर यान अधिनियम (1988 का 59), धारा 173(1) – धारा 173(1) के परन्तुक की अपेक्षाओं के अनुपालन में राशि जमा करने से छूट – अधिकरण का अवार्ड स्वामी, चालक और बीमाकर्ता के विरुद्ध दायित्व निश्चित करता है – तथापि अधिकरण ने बीमाकर्ता को स्वामी से राशि वसूल करने की अनुमति दी – बीमाकर्ता ने सम्पूर्ण राशि अधिकरण में जमा की – स्वामी द्वारा अपील और धारा 173(1) के परन्तुक के अनुपालन में राशि जमा करने से छूट की प्रार्थना – अभिनिर्धारित – अधिनियम में ऐसी छूट देने का कोई उपबंध नहीं है – अपीलार्थी/स्वामी बीमाकर्ता द्वारा किये गये जमा के लाभ का दावा नहीं कर सकता। (चंद्रकांता भंडारी (श्रीमति) वि. मनोहर लाल) ...2373

मोटर यान अधिनियम (1988 का 59), धारा 173(1) परन्तुक – निर्वचन – जब संविधि की भाषा सरल और असंदिग्ध हो, तब ऐसे शब्दों को बिना उनमें कोई और शब्द जोड़े उनका अर्थ निकाला जाना चाहिए – यदि विधायन का आशय जमा करने से छूट देना था तब यह उपबंध धारा में ही होना चाहिए था। (चंद्रकांता भंडारी (श्रीमति) वि. मनोहर लाल) ...2373

मोटर यान अधिनियम (1988 का 59), धाराएँ 173 व 96(2)(बी) – बीमा कम्पनी का दायित्व – वैध लायसेंसधारी चालक स्वामी की जानकारी के बिना .षि प्रयोजन के लिए बीमित ट्रेक्टर ट्रॉली में यात्रियों को ले गया – बीमा कम्पनी ने पॉलिसी भंग करने का अभिकथन किया – अभिनिर्धारित – भंग का अर्थ वचन या आभार का अतिलंघन या उल्लंघन है – इस रूप में बीमा कम्पनी को यह स्थापित करना होगा कि बीमित वचन के अतिलंघन या उल्लंघन का दोषी था – बीमाकर्ता को अधिकरण या न्यायालय को भी संतुष्ट करना होता है कि बीमाकर्ता की ओर से ऐसा उल्लंघन या अतिलंघन जानबूझकर था – अभिलेख पर ऐसा साक्ष्य नही है कि यात्रियों को ट्रेक्टर ट्रॉली में स्वामी के सम्यक् ज्ञान या अनुमति से ले जाया जा रहा था – बीमा कम्पनी अपने वैधानिक दायित्व से इनकार नही कर सकती। (नेशनल इंश्योरेंस कं. लि. वि. विद्याबाई) ...3270

मोटर यान नियम, केन्द्रीय, 1989, नियम 81 – देखें – मोटर यान अधिनियम 1988, धाराएँ 64, 65 व 41, (राकेश सेठी वि. म.प्र. राज्य) ...2297

मोटर यान नियम, म.प्र., (1994 का), नियम 55–ए – देखें – मोटर यान अधिनियम 1988, धाराएँ 64, 65 व 41, (राकेश सेठी वि. म.प्र. राज्य) ...2297

नगर पालिक निगम अधिनियम, म.प्र. (1956 का 23), धारा 307(5) – ऐसा निर्माण कार्य हटाने या उसमें परिवर्तन करने के संबंध में आदेश देने की शक्ति, जो उप–विधियों या किसी

Full Bench was "Whether the locus standi under Sub-section (5) of Section 307 of the Act is restricted to the person affected by the violation complained of or encompasses all persons resident within the area to which the Act applies?" - Held - The locus standi under Sub-section (5) of Section 307 of the Act of 1956 is not restricted to a person affected by the violation complained of but encompasses all persons resident within the area to which the Act of 1956 applies. The reference is answered accordingly. The Division Bench decision in the case of Radhakishan Sharma (1996 MPACJ 55) to the contrary is overruled - Appeal dismissed. [Dilip Kaushal v. State of M.P.] (FB)...2167

Municipal Employees Recruitment and Conditions of Service Rules, M.P. 1968, Rule 2(e), (f) - See - *Municipalities Act, M.P., 1961, Sections 86, 87, 88 & 94* [State of M.P. v. Ashok Kumar Sharma] ...2527

Municipalities Act, M.P. (37 of 1961), Section 47 - *Difference between word 'approval' and 'satisfaction' - Recalling of president - Held - The degree of application of mind in the word 'satisfaction' is greater than the word 'approval' - Normally approval is granted to an act of some other persons and not of his own - However, so far as satisfaction is concerned - Satisfaction is personal satisfaction - Said satisfaction can also be on proposal or any other material or report submitted by some other authority, still personal satisfaction is necessary - Hence, greater degree of application of mind is necessary, when the mandate of the law is that the 'satisfaction' is the satisfaction of himself - Appeal dismissed.* [Madan Lal Narvariya v. Smt. Satyaprakashi Parsedia] ...2542

Municipalities Act, M.P. (37 of 1961), Sections 86, 87, 88 & 94, Municipal Employees Recruitment and Conditions of Service Rules, M.P. 1968, Rule 2(e), (f) - *Respondents alleging to be employees of State Government having been appointed in a cell constituted by the State Government namely M.P. State Municipal Services (Technical Cell) in exercise of powers conferred u/s 86 of Act of 1961 - Held - There is a specific rule which provides that only State Municipal Service (Executive) are excluded from the definition of "municipal service" and "municipal employee" and other categories i.e. State Municipal Service (Health) and State Municipal Service (Engineering) are included in the said definition - Respondents employees belong to category (c) i.e. State Municipal Service (Engineering), hence, they are covered by the definition of "municipal service" and "municipal employee" - Hence, so long as said definitions are not challenged, the respondents employees cannot claim that they are the employees of the State Government, even though they are getting the same salary and benefits as are available to the State Government employees - Appeal Allowed.* [State of M.P. v. Ashok Kumar Sharma] ...2527

Muslim Women (Protection of Rights on Divorce) Act (25 of 1986),

योजना या किसी अन्य माँग के अनुरूप न हो – पूर्ण न्यायपीठ के समक्ष निर्देश के लिए प्रश्न था "क्या अधिनियम की धारा 307 की उपधारा (5) के अधीन सुने जाने का अधिकार शिकायत किये गये उल्लंघन से प्रभावित व्यक्ति तक सीमित है या क्षेत्र, जिसे अधिनियम लागू होता है, में रहने वाले सभी व्यक्तियों को परिवेष्टित करता है ?" – अभिनिर्धारित – 1956 के अधिनियम की धारा 307 की उपधारा (5) के अधीन सुने जाने का अधिकार शिकायत किये गये उल्लंघन से प्रभावित व्यक्ति तक सीमित नही है बल्कि क्षेत्र, जिसे 1956 का अधिनियम लागू होता है, में रहने वाले सभी व्यक्तियों को परिवेष्टित करता है। निर्देश तदनुसार उत्तरित किया गया। इसके प्रतिकूल राधाकिशन शर्मा (1996 एमपीएसीजे 55) के मामले में खण्ड न्यायपीठ का निर्णय उलटा गया – अपील खारिज। (दिलीप कौशल वि. म.प्र. राज्य) (FB)---2167

नगरपालिका कर्मचारी भर्ती और सेवा की शर्तें नियम, म.प्र., 1968, नियम 2(ई), (एफ) – देखें – नगरपालिका अधिनियम, म.प्र., 1961, धारा 86, 87, 88 व 94 (म.प्र. राज्य वि. अशोक कुमार शर्मा) ...2527

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 47 – शब्द 'अनुमोदन' और 'समाधान' में अंतर – अध्यक्ष को वापस बुलाना – अभिनिर्धारित – शब्द 'समाधान' में मस्तिष्क के प्रयोग की मात्रा शब्द 'अनुमोदन' से अधिक है – सामान्यतः अनुमोदन कुछ अन्य व्यक्तियों के किसी कार्य का किया जाता है न कि अपने स्वयं के कार्य का – तथापि जहाँ तक समाधान का संबंध है – समाधान व्यक्तिगत समाधान है – कथित समाधान कुछ अन्य प्राधिकारियों द्वारा प्रस्तुत प्रस्ताव या किसी अन्य सामग्री या रिपोर्ट पर भी हो सकता, फिर भी व्यक्तिगत समाधान आवश्यक है – इसलिए मस्तिष्क के प्रयोग की अधिक मात्रा आवश्यक है, जब विधि का यह आदेश हो कि 'समाधान' स्वयं का समाधान है – अपील खारिज। (मदन लाल नरवरिया वि. श्रीमति सत्यप्रकाशी परसेदिया) ...2542

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 86, 87, 88 व 94, नगरपालिका कर्मचारी भर्ती और सेवा की शर्तें नियम, म.प्र., 1968, नियम 2(ई), (एफ) – प्रत्यर्थियों ने, राज्य सरकार द्वारा 1961 के अधिनियम की धारा 86 के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में गठित प्रकोष्ठ अर्थात् म.प्र. राज्य नगरपालिका सेवा (तकनीकी प्रकोष्ठ) में नियुक्त किये जाने से, राज्य सरकार के कर्मचारी होना अभिकथित किया – अभिनिर्धारित – विनिर्दिष्ट नियम है जो उपबंधित करता है कि केवल राज्य नगरपालिका सेवा (कार्यपालिक) "नगरपालिका सेवा" और "नगरपालिका कर्मचारी" की परिभाषा से अपवर्जित हैं और अन्य श्रेणीयाँ अर्थात् राज्य नगरपालिका सेवा (स्वास्थ्य) और राज्य नगरपालिका सेवा (अभियांत्रिकी) उक्त परिभाषा में सम्मिलित हैं – प्रत्यर्थी कर्मचारी श्रेणी (सी) अर्थात् राज्य नगरपालिका सेवा (अभियांत्रिकी) से सम्बद्ध हैं, इसलिए वे "नगरपालिका सेवा" और "नगरपालिका कर्मचारी" की परिभाषा के अन्तर्गत आते हैं – इसलिए जब तक उक्त परिभाषाओं को चुनौती नही दी जाती, प्रत्यर्थी कर्मचारी यह दावा नही कर सकते कि वे राज्य सरकार के कर्मचारी हैं, यद्यपि वे भी राज्य सरकार के कर्मचारियों को उपलब्ध के समान वेतन और लाभ प्राप्त कर रहे हैं – अपील मंजूर। (म.प्र. राज्य वि. अशोक कुमार शर्मा) ...2527

मुस्लिम स्त्री (विवाह विच्छेद पर अधिकार संरक्षण) अधिनियम (1986 का 25),

Section 3(1), Muslim Woman (Protection of Rights on Divorce) Rules, 1986, Rule 4 - *An application u/s 3(1) of the Act was filed by non-applicant for recovery of Mehar & maintenance - Before magistrate applicant and non-applicant have filed their evidence on affidavit - Order of maintenance passed by magistrate - Revisional court affirmed the order - Order challenged before High Court on the ground that evidence not be taken in the presence of applicant as per Rule 4 of Rules 1986 - Non-applicant has taken a plea that none of the parties have raised such objection before magistrate - Now applicant cannot take this objection in view of principle of estoppel - Held - There can be no estoppel against statute and no rule of estoppel between the parties - Cannot compel court to take any action contrary to express words of statute - Admittedly, evidence not recorded in the presence of applicant against whom order of maintenance was made - Order passed by magistrate and revisional court illegal - Therefore, set-aside with the direction to record fresh evidence in presence of applicant and pass order in accordance with law.* [Mohiuddin v. Smt. Azra Bano] ...*88

Muslim Woman (Protection of Rights on Divorce) Rules, 1986, Rule 4, Criminal Procedure Code, 1973, Section 126(2) - *The language of Section 126(2) of Code and Rule 4 of Rules 1986 is similar.* [Mohiuddin v. Smt. Azra Bano] ...*88

Muslim Woman (Protection of Rights on Divorce) Rules, 1986, Rule 4 - See - *Muslim Women (Protection of Rights on Divorce) Act, 1986, Section 3(1)* [Mohiuddin v. Smt. Azra Bano] ...*88

Narcotics Drugs and Psychotropic Substances Act (61 of 1985), Sections 2(vii)(a), 8/18(b) & 8/18(c) - *Whether 2.5 Kg opium will come within commercial quantity or non-commercial quantity - 2.5 Kg of opium seized from the possession of appellant - Trial court has not pointed out specifically whether the appellant is convicted for commercial quantity or non-commercial quantity - However, awarded Jail sentence of 10 years and fine of Rs. 1 lac - Conviction and sentence challenged before High Court - Held - As per definition u/s 2(vii)(a) 'commercial quantity' means any quantity greater than the quantity specified by the Central Government by notification - In the notification commercial quantity of opium is mentioned in item No.92 as 2.5 Kg - If more than this quantity would have been seized from the possession of the appellant, the appellant would be responsible for punishment for commercial quantity u/s 8/18(b) of the Act - Since 2.5 Kg opium has been seized from the appellant, therefore, his case would fall under non-commercial quantity which is punishable u/s 8/18(c) of the Act - U/s 8/18(c) minimum Jail sentence is not prescribed - Looking to the facts of the case, Jail sentence reduced to 7 years from 10 years.* [Gopal v. State of M.P.] ...*92

Narcotics Drugs and Psychotropic Substances Act (61 of 1985),

धारा 3(1), मुस्लिम स्त्री (विवाह विच्छेद पर अधिकार संरक्षण) नियम, 1986, नियम 4 – अनावेदक द्वारा अधिनियम की धारा 3(1) के अन्तर्गत मेहर और भरण–पोषण की वसूली हेतु आवेदन पेश किया – मजिस्ट्रेट के समक्ष आवेदक और अनावेदक ने शपथपत्र पर अपनी साक्ष्य पेश की – मजिस्ट्रेट द्वारा भरण–पोषण का आदेश पारित किया गया – पुनरीक्षण न्यायालय ने आदेश की पुष्टि की – आदेश को उच्च न्यायालय के समक्ष इस आधार पर चुनौती दी गई कि नियम 1986 के नियम 4 के अनुसार साक्ष्य आवेदक की उपस्थिति में नही लिया गया – अनावेदक ने तर्क लिया कि किसी भी पक्षकार ने ऐसी आपत्ति मजिस्ट्रेट के समक्ष नही उठाई – अब आवेदक बिबन्ध के सिद्धांत के आलोक में यह आपत्ति नही ले सकता – अभिनिर्धारित – अधिनियमिति के विरुद्ध कोई बिबन्ध नही हो सकता और पक्षकारों के मध्य बिबन्ध का कोई नियम नही – न्यायालय को अधिनियमिति के अभिव्यक्त शब्दों के प्रतिकूल कार्यवाही करने को विवश नही किया जा सकता – स्वीकृत रूप से साक्ष्य आवेदक की उपस्थिति में नही लिया गया जिसके विरुद्ध भरण–पोषण का आदेश किया गया था – मजिस्ट्रेट और पुनरीक्षण न्यायालय द्वारा पारित आदेश अवैध – इसलिए आवेदक की उपस्थिति में पुनः साक्ष्य अभिलिखित करने और विधि अनुसार आदेश पारित करने के निदेश के साथ अपास्त किया गया। (मोहिउद्दीन वि. श्रीमति अजराबानो) ---*88

मुस्लिम स्त्री (विवाह विच्छेद पर अधिकार संरक्षण) नियम, 1986, नियम 4, दण्ड प्रक्रिया संहिता, 1973, धारा 126(2) – संहिता की धारा 126(2) और नियम 1986 के नियम 4 की भाषा समान है। (मोहिउद्दीन वि. श्रीमति अजराबानो) ---*88

मुस्लिम स्त्री (विवाह विच्छेद पर अधिकार संरक्षण) नियम, 1986, नियम 4 – देखें – मुस्लिम स्त्री (विवाह विच्छेद पर अधिकार संरक्षण) अधिनियम, 1986, धारा 3(1) (मोहिउद्दीन वि. श्रीमति अजराबानो) ---*88

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 2(vii)(ए), 8/18(बी) व 8/18(सी) – क्या 2.5 किग्रा अफीम वाणिज्यिक मात्रा के अन्तर्गत आयेगी या गैर–वाणिज्यिक मात्रा के – अपीलार्थी के कब्जे से 2.5 किग्रा अफीम अभिग्रहीत की गई – विचारण न्यायालय ने विनिर्दिष्ट रूप से नही बताया कि अपीलार्थी को वाणिज्यिक मात्रा के लिए दण्डित किया गया है या गैर–वाणिज्यिक मात्रा के लिए – तथापि 10 वर्ष का जेल दण्डादेश और 1 लाख रुपये जुर्माना अधिनिर्णीत किया – दोषसिद्धि और दण्डादेश को उच्च न्यायालय के समक्ष चुनौती दी गई – अभिनिर्धारित – धारा 2(vii)(ए) के अनुसार 'वाणिज्यिक मात्रा' का अर्थ केन्द्र सरकार द्वारा अधिसूचना द्वारा विनिर्दिष्ट मात्रा से अधिक मात्रा से है – अधिसूचना में अफीम की वाणिज्यिक मात्रा आइटम नं. 92 में 2.5 किग्रा दी गई है – यदि इस मात्रा से अधिक अपीलार्थी के कब्जे से अभिग्रहीत की जाती, तो अपीलार्थी अधिनियम की धारा 8/18(बी) के अन्तर्गत वाणिज्यिक मात्रा के लिए दण्ड के लिए दायी होता – चूंकि अपीलार्थी के कब्जे से 2.5 किग्रा अफीम अभिग्रहीत की गई, इसलिए उसका मामला गैर–वाणिज्यिक मात्रा के अन्तर्गत आयेगा जो अधिनियम की धारा 8/18(सी) के अन्तर्गत दण्डनीय है – धारा 8/18(सी) के अन्तर्गत न्यूनतम जेल दण्डादेश विहित नही है – मामले के तथ्यों को देखते हुए जेल दण्डादेश 10 वर्ष से घटाकर 7 वर्ष किया गया। (गोपाल वि. म.प्र. राज्य) ...*92

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 8, 20

Sections 8, 20 - *Cannabis plants seized from field - Land record and map of field produced - Appellant denied ownership and possession of field - Held - Prosecution is required to prove that the appellant was in exclusive possession of the field where cannabis plants were seized and he was having conscious possession of contraband article - Neither name of Patwari who issued the record disclosed nor signature & handwriting proved - Land record and map not proved in accordance with provision of S. 67 of Evidence Act - Independent witness also did not support prosecution case - Prosecution failed to prove case beyond reasonable doubt - Conviction and sentence set-aside - Appeal allowed.* [Bheru v. State of M.P.] ...3008

Narcotics Drugs and Psychotropic Substances Act, (61 of 1985), Section 8 r/w 20(b)(iii)(b) - See - *Criminal Procedure Code, 1973, Section 374(2)* [Kuldeep Sahu v. State of M.P.] ...2985

National Highways Act (48 of 1956), Section 3-A - ***Power to acquire land*** - *It is not for Court, but for Central Government to decide that which particular land is to be acquired for the purposes mentioned in notification u/s 30-A.* [Devi Prasad Singh v. State of M.P.] ...2189

National Highways Act (48 of 1956), Sections 3-A, 3-D, National Highways Authority of India Act, 1988, Section 16 - ***Acquisition of land*** - *Land of the appellant acquired for public purposes of building (widening), maintenance, management and operation of National Highway - Held - Acquisition of land permissible not only for above objects but for all purposes ancillary or incidental to such objects such as establishment and maintenance of hotels, motels, restaurants, rest rooms at or near Highways and facilities & amenities for users of National Highways.* [Devi Prasad Singh v. State of M.P.] ...2189

National Highways Authority of India Act, (68 of 1988), Section 16 - See - *National Highways Act 1956, Sections 3-A, 3-D,* [Devi Prasad Singh v. State of M.P.] ...2189

National Security Act, (65 of 1980), Section 3(2) - See - *Constitution, Article 226* [Lalitabai v. State of M.P.] ...2587

Negotiable Instruments Act (26 of 1881), Section 80 - *No provision in agreement for payment of interest - When no rate of interest is specified in the instrument, interest on due amount shall be calculated @ 18% - However, plaintiffs claimed interest @ 6% - Interest rightly awarded.* [Manak Chand Jain v. Pukhraj Bai (Smt.)] ...2619

Negotiable Instruments Act (26 of 1881), Section 138 - *Complaint can be signed and filed by Counsel on the basis of memo of appearance.* [Kewal Kumar Jaggi v. Vinod Kumar Sahu] ...3055

Negotiable Instruments Act (26 of 1881), Section 138 - ***Dishonour of cheque*** - *Trial Court acquitted the accused on the ground that complainant*

– गांजे के पौधे खेत से अभिग्रहीत – खेत का भू अभिलेख और नक्शा पेश – अपीलार्थी ने खेत के स्वामित्व और कब्जे से इंकार किया – अभिनिर्धारित – अभियोजन को यह साबित करना अपेक्षित है कि अपीलार्थी खेत के एकमात्र कब्जे में था जहाँ से गांजे के पौधे अभिग्रहीत किये गए और वह निषिद्ध वस्तु का सचेतन कब्जा रखता था – न तो अभिलेख जारी करने वाले पटवारी का नाम प्रकट किया गया और न ही हस्ताक्षर और हस्तलेख साबित किये – भू अभिलेख और नक्शा साक्ष्य अधिनियम की धारा 67 के उपबंध के अनुसार साबित नही किये – स्वतंत्र साक्षी ने भी अभियोजन के मामले का समर्थन नहीं किया – अभियोजन मामला युक्तियुक्त संदेह से परे साबित करने में असफल – दोषसिद्धि और दण्डादेश अपास्त – अपील मंजूर। (भेरू वि. म.प्र. राज्य) ...3008

स्वापक औषधि और मन:प्रभावी पदार्थ अधिनियम, (1985 का 26), धारा 8 सहपठित 20(बी)(iii)(बी) – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 374(2) (कुलदीप साहू वि. म.प्र. राज्य) ...2985

राष्ट्रीय राजमार्ग अधिनियम (1956 का 48), धारा 3–ए – भूमि अर्जित करने की शक्ति – यह विनिश्चय करने की शक्ति न्यायालय को नही है बल्कि केन्द्र सरकार को है कि धारा 30–ए के अन्तर्गत अधिसूचना में वर्णित प्रयोजनों के लिए कौन सी विशिष्ट भूमि अर्जित की जाए। (देवी प्रसाद सिंह वि. म.प्र. राज्य) 2189

राष्ट्रीय राजमार्ग अधिनियम (1956 का 48), धाराएँ 3–ए, 3–डी, भारतीय राष्ट्रीय राजमार्ग प्राधिकरण अधिनियम, 1988, धारा 16 – भूमि का अर्जन – अपीलार्थी की भूमि राष्ट्रीय राजमार्ग के निर्माण (चौड़ीकरण), अनुरक्षण, प्रबंध और प्रचालन के सार्वजनिक प्रयोजनों के लिए अर्जित की गई – अभिनिर्धारित – भूमि का अर्जन, न केवल उक्त उद्देश्यों के लिए बल्कि ऐसे उद्देश्यों के सहायक या आनुषंगिक सभी प्रयोजनों जैसे राष्ट्रीय राजमार्ग पर या उनके निकट होटलों, मोटलों, भोजनालयों, विश्रामालयों की स्थापना और अनुरक्षण और राष्ट्रीय राजमार्ग का उपयोग करने वालों के लिए सुख सुविधाओं के लिए भी, अनुज्ञेय है। (देवी प्रसाद सिंह वि. म.प्र. राज्य) 2189

भारतीय राष्ट्रीय राजमार्ग प्राधिकरण अधिनियम, (1988 का 68), धारा 16 – देखें – राष्ट्रीय राजमार्ग अधिनियम 1956, धाराएँ 3–ए, 3–डी, (देवी प्रसाद सिंह वि. म.प्र. राज्य)....2189

राष्ट्रीय सुरक्षा अधिनियम, (1980 का 65), धारा 3(2) – देखें – संविधान, अनुच्छेद 226 (ललिता बाई वि. म.प्र. राज्य) ...2587

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 80 – अनुबन्ध में ब्याज के संदाय के लिए कोई उपबंध नही – जब लिखत में ब्याज की कोई दर विनिर्दिष्ट नही की गई हो, शोध्य राशि पर ब्याज की गणना 18 प्रतिशत की दर से की जाएगी – तथापि, वादियों ने ब्याज 6 प्रतिशत की दर से माँगा – ब्याज उचित रूप से दिलाया गया। (मानक चंद जैन वि. पुखराज बाई (श्रीमति) ...2619

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – परिवाद मेमो ऑफ एपीअरेंस के आधार पर अधिवक्ता द्वारा हस्ताक्षरित और पेश किया जा सकता है। (केवल कुमार जग्गी वि. विनोद कुमार साहू) ...3055

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – चेक का अनादरण – विचारण न्यायालय ने अभियुक्त को इस आधार पर दोषमुक्त किया कि परिवादी ने रजिस्टर्ड डाक

had not filed postal receipt regarding sending of the notice by registered post and the acknowledgment was not bearing any postal seal and who received the notice was not clear - Intimation of dishonour of cheque was sent by the advocate of complainant, which was replied by the advocate of accused - Held - In Section 138 or anywhere in the enactment, mode of service of notice is not prescribed - Sending of reply is not disputed by the accused in the statement, therefore, the statutory requirement has been complied with - Impugned order of acquittal set-aside and accused found guilty u/s 138 of the Act - Appeal allowed. [Prakashchand v. Sureshchand] ...2412

Negotiable Instruments Act (26 of 1881), Section 138, Evidence Act, 1872, Section 114 Illustration (f), General Clauses Act, 1897, Section 27 - *Dishonour of Cheque* - *Notice by registered post on correct address - Postman tried to deliver on several dates - Notice returned with remark addressee not available - Presumption about service not rebutted - Held - Notice duly served - Order of conviction passed by trial court upheld - Appeal allowed.* [Mujaffar Hussain Mansoori v. Devendra Trivedi] ...2687

Negotiable Instruments Act, (26 of 1881), Section 138 - See - *Criminal Procedure Code, 1973, Sections 239, 245 & 258,* [Girraj Patwa v. Dayaram]...3355

Negotiable Instruments Act (26 of 1881), Sections 138 & 142 - *Delay - Condonation* - *Magistrate is empowered to condone the delay as per proviso to clause (b) of Section 142 of the Act, which came into force on 06.02.2003.* [Girraj Patwa v. Dayaram] ...3355

Negotiable Instruments Act (26 of 1881), Section 139 - *Presumption in favour of holder of cheque, unless the contrary is proved that holder of cheuqe received cheque for discharge, in whole or in part, of any debt or liability.* [Mujaffar Hussain Mansoori v. Devendra Trivedi] ...2687

Negotiable Instruments Act (26 of 1881), Section 145 - *Evidence on affidavit - Accused cannot avail the right to examine its witness on affidavit.* [Suresh v. Ashok] ...*84

Panchayat (Appeal and Revision) Rules, M.P. 1995, Rule 3 - *State Government and Collector have sanctioned and approved the posts to be filled up - Order of appointment of Shiksha Karmis bears the signature of an Additional Assistant Development Commissioner - Held - It cannot be construed that this order is passed by some authority of State Government or its officers and not by the Janpad Panchayat - Collector competent to deal with the appeal u/R 3 - Revision maintainable u/R 5 before Commissioner.* [Shyama Dwivedi (Smt.) v. State of M.P.] ...2885

Panchayats (Appeal and Revision) Rules, M.P. 1995, Rule 5(1)(a) - *Revision* - *Revision before Commissioner is maintainable against order passed by Collector in appeal.* [Sone Singh v. State of M.P.] ...*82

से सूचनापत्र भेजने के संबंध में पोस्टल रसीद पेश नहीं की थी और पावती पर कोई पोस्टल सील अंकित नही थी और सूचनापत्र किसने प्राप्त किया, स्पष्ट नहीं था – चेक के अनादरण की सूचना परिवादी के अधिवक्ता द्वारा भेजी गई जिसका जवाब अभियुक्त के अधिवक्ता द्वारा दिया गया – अभिनिर्धारित – धारा 138 में अथवा अधिनियमिति में कहीं भी सूचनापत्र की तामील का तरीका विहित नही है – जवाब का भेजा जाना अभियुक्त द्वारा कथन में विवादित नहीं किया गया, इसलिए कानूनी आवश्यकता का अनुपालन किया जा चुका है – दोषमुक्ति का आक्षेपित आदेश अपास्त किया गया और अभियुक्त को अधिनियम की धारा 138 के अधीन दोषी पाया गया – अपील मंजूर। (प्रकाशचंद वि. सुरेशचंद) ...2412

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138, साक्ष्य अधिनियम, 1872, धारा 114 दृष्टांत (एफ), साधारण खण्ड अधिनियम, 1897, धारा 27 – चेक का अनादरण – रजिस्टर्ड डाक द्वारा सूचनापत्र सही पते पर – डाकिये ने विभिन्न तारीखों पर परिदान करने का प्रयत्न किया – सूचनापत्र पाने वाला उपलब्ध नही की टीप के साथ वापस प्राप्त हुआ – तामील के बारे में उपधारणा खण्डित नही – अभिनिर्धारित – सूचनापत्र सम्यक रूप से तामील हुआ – विचारण न्यायालय द्वारा पारित दोषसिद्धि का आदेश पुष्ट किया गया – अपील मंजूर। (मुजफर हुसैन मंसूरी वि. देवेन्द्र त्रिवेदी) ...2687

परक्राम्य लिखत अधिनियम, (1881 का 26), धारा 138 – देखें – दण्ड प्रक्रिया संहिता, 1973, धाराएँ 239, 245 व 258, (गिरिराज पटवा वि. दयाराम) ...3355

परक्राम्य लिखत अधिनियम (1881 का 26), धाराएँ 138 व 142 – विलम्ब – माफी – मजिस्ट्रेट अधिनियम की धारा 142 के खण्ड (बी) के परन्तुक, जो तारीख 06.02.2003 को प्रवृत्त हुआ, के अनुसार विलम्ब माफ करने के लिए सक्षम है। (गिरिराज पटवा वि. दयाराम) 3355

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 139 – चेक धारण करने वाले के पक्ष में उपधारणा, जब तक इसके विरुद्ध साबित नही किया जाता कि चेक को धारण करने वाले ने किसी ऋण या दायित्व से पूर्णतः या भागतः उन्मुक्ति के लिए चेक प्राप्त किया। (मुजफर हुसैन मंसूरी वि. देवेन्द्र त्रिवेदी) ...2687

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 145 – शपथपत्र पर साक्ष्य – अभियुक्त शपथपत्र पर उसके साक्षी का परीक्षण कराने के अधिकार का लाभ नही उठा सकता है। (सुरेश वि. अशोक) ...*84

पंचायत (अपील और पुनरीक्षण) नियम, म.प्र. 1995, नियम 3 – राज्य सरकार और कलेक्टर ने भरे जाने वाले पद स्वीकृत और अनुमोदित किये – शिक्षा कर्मियों के नियुक्ति आदेश पर अतिरिक्त सहायक विकास कमिश्नर के हस्ताक्षर – अभिनिर्धारित – यह अर्थ नही लगाया जा सकता कि यह आदेश राज्य सरकार के किसी प्राधिकारी या उसके अधिकारियों द्वारा पारित किया गया न कि जनपद पंचायत द्वारा – कलेक्टर नियम 3 के अन्तर्गत अपील पर कार्यवाही करने के लिए सक्षम – नियम 5 के अन्तर्गत कमिश्नर के समक्ष पुनरीक्षण पोषणीय। (श्यामा द्विवेदी (श्रीमति) वि. म.प्र. राज्य) ...2885

पंचायत (अपील और पुनरीक्षण) नियम, म.प्र. 1995, नियम 5(1)(ए) – पुनरीक्षण – आयुक्त के समक्ष कलेक्टर द्वारा अपील में पारित आदेश के विरुद्ध पुनरीक्षण पोषणीय है। (सोने सिंह वि. म.प्र. राज्य) ...*82

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 36(2) - *"Questioned" and "decided" are to be read as one - The word 'and' certainly can be read as 'or' if the intention of the legislature is not clear or the law requires the word "and" to be used as "or".* [Bhuvaneshwar Prasad @ Guddu Dixit v. State of M.P.] ...2788

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 36(2) - *Sub-section (2) would simply mean that the jurisdiction of Collector is not required to be invoked in a case where the question was raised and finally decided by Election Tribunal - Collector could not proceed to make an enquiry and re-decide the issue u/s 36(3) of the Act contrary to the findings recorded by the tribunal.* [Bhuvaneshwar Prasad @ Guddu Dixit v. State of M.P.] ...2788

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 36(2) & (3) - ***Appellant elected as Sarpanch*** *- Election was challenged by filing election petition beyond the period of limitation - S.D.O. issued notices but thereafter referred the matter to Collector with a submission that matter can be decided by Collector u/s 36 - Held - When an election petition not duly constituted is filed before S.D.O. and S.D.O. finds that question can be decided by a higher officer in exercise of power u/s 36, then a reference can certainly be made by him - Section 36(3) provides that Collector may give his decision either on an application made to him by any person or on his own motion - Proceedings before Collector were maintainable - Appeal dismissed.* [Bhuvaneshwar Prasad @ Guddu Dixit v. State of M.P.] ...2788

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 36(3) - *Sub-section (3) clearly show that legislature wanted the Collector to exercise powers to see that no disqualified person contests the election after concealing disqualification or no person who has become disqualified after the elections are over is continued as an office bearer in Panchayat - Collector also has to see that whether the disqualification is removable and, if yes, but not removed, then in such a case the Collector may declare that the office has become vacant. [Bhuvaneshwar Prasad @ Guddu Dixit v. State of M.P.]* ...2788

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P., 1993 (1 of 1994), Sections 69(1), 70 - ***Powers of Panchayat*** *- Panchayat cannot appoint Secretary or C.E.O. - Panchayat can appoint other officers and servants as it considers necessary for efficient discharge of its duties - Previous approval of prescribed authority is required not to a named officer or named servant but to appointment of such officers.* [Manoj Kumar Yadav v. State of M.P.] ...2523

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Sections 70, 86(2) - *Gram Panchayat failed to appoint a Panchayat Karmi within the specified period - Therefore, Collector being a prescribed authority, in exercise of powers u/s 86(2) of the Adhiniyam authorized the C.E.O. to*

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 36(2) – "प्रश्नगत" और "विनिश्चित" को एक साथ पढ़ा जाना चाहिए – शब्द 'और' निश्चित रूप से 'या' पढ़ा जा सकता है यदि विधायिका का आशय स्पष्ट नही है या विधि की अपेक्षा है कि शब्द "और" को "या" के रूप में प्रयुक्त किया जाए। (भुवनेश्वर प्रसाद उर्फ गुड्डा दीक्षित वि. म.प्र. राज्य) ...2788

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 36(2) – उपधारा (2) का सामान्यतः अर्थ होता है कि कलेक्टर की अधिकारिता का प्रयोग वहाँ अपेक्षित नही है जहाँ प्रश्न उत्पन्न हुआ और उसका अंतिम विनिश्चिय चुनाव अधिकरण द्वारा कर दिया गया – अधिनियम की धारा 36(3) के अन्तर्गत कलेक्टर अधिकरण के निष्कर्षों के विरुद्ध जाँच और विवाद्यक का पुनः विनिश्चय नही कर सकता। (भुवनेश्वर प्रसाद उर्फ गुड्डा दीक्षित वि. म.प्र. राज्य)...2788

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 36(2) व (3) – अपीलार्थी सरपंच के रूप में चुना गया – चुनाव को परिसीमा की कालावधि के उपरांत चुनाव याचिका पेश करके चुनौती दी गई – एस.डी.ओ. ने सूचनापत्र जारी किये किन्तु उसके बाद मामला इस निवेदन के साथ कलेक्टर को निर्देशित किया कि धारा 36 के अन्तर्गत मामला कलेक्टर द्वारा विनिश्चित किया जा सकता है – अभिनिर्धारित – जब कोई चुनाव याचिका सम्यक् रूप से संस्थापित किये बिना एस.डी.ओ. के समक्ष पेश की जाती है और एस.डी.ओ. यह पाता है कि प्रश्न का विनिश्चय धारा 36 के अन्तर्गत शक्तियों के प्रयोग में उच्चतर अधिकारी द्वारा किया जा सकता है तब उसके द्वारा निश्चित रूप से निर्देश (reference) किया जा सकता है – धारा 36(3) उपबंधित करती है कि कलेक्टर या तो किसी व्यक्ति द्वारा उसे किये गये आवेदन पर या स्वप्रेरणा से अपना विनिश्चय दे सकता है – कलेक्टर के समक्ष कार्यवाहियाँ पोषणीय थीं – अपील खारिज। (भुवनेश्वर प्रसाद उर्फ गुड्डा दीक्षित वि. म.प्र. राज्य) ...2788

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 36(3) – उपधारा (3) स्पष्ट रूप से दर्शाती है कि विधायिका कलेक्टर से यह चाहती है कि वह शक्तियों का प्रयोग यह देखने में करे कि कोई अयोग्य व्यक्ति अयोग्यता को छिपाकर चुनाव नही लड़े या जो व्यक्ति चुनावों के पश्चात् अयोग्य हो गया है पंचायत में पदधारी के रूप में बना नही रहे – कलेक्टर को यह भी देखना चाहिए कि क्या अयोग्यता हटाये जाने योग्य है और, यदि हाँ, किन्तु हटायी नही गई है, तब ऐसे मामले में कलेक्टर यह घोषित कर सकता है कि पद रिक्त हो गया है। (भुवनेश्वर प्रसाद उर्फ गुड्डा दीक्षित वि. म.प्र. राज्य) ...2788

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र., 1993 (1994 का 1), धाराएँ 69(1), 70, पंचायत की शक्तियाँ – पंचायत सचिव या मुख्य कार्यपालक अधिकारी को नियुक्त नहीं कर सकती – पंचायत अन्य अधिकारियों एवं कर्मचारियों को नियुक्त कर सकती है जिन्हें वह अपने कर्त्तव्यों के दक्षतापूर्ण निर्वहन के लिए आवश्यक मानती है – ऐसे अधिकारियों की नियुक्ति के लिए विहित प्राधिकारी का पूर्व अनुमोदन अपेक्षित है न कि किसी नामित अधिकारी या नामित कर्मचारी के लिए। (मनोज कुमार यादव वि. म.प्र. राज्य) ...2523

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धाराएँ 70, 86(2) – ग्राम पंचायत विनिर्दिष्ट कालावधि में पंचायत कर्मी की नियुक्ति करने में असफल रही – इसलिए, कलेक्टर ने विहित प्राधिकारी होने से अधिनियम की धारा 86(2) की शक्तियों को प्रयोग में लाते हुए सी.ई.ओ.

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appoint Panchayat-Karmi - C.E.O. appointed Panchayat Karmi - Appointment challenged on the ground that under the Adhiniyam only Gram Panchayat can appoint Panchayat Karmi - Held - U/s 86(2) of the Adhiniyam, expression "all necessary powers" will include the power to authorize any authority to perform the duty of Panchayat such as appointment of a Panchayat Karmi u/s 70(1) of Adhiniyam - Therefore, Collector as prescribed authority had a power u/s 86(2) of the Adiniyam to authorize the C.E.O., Janpad Panchayat to appoint a Panchayat Karmi - The order of appointment is to be treated as of order passed by the prescribed authority - Petition dismissed. [Leelawati (Smt.) v. State of M.P.] ...2817

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 122 - *Election Petition after expiry of 30 days in accordance with Section 122(2) of the Act was nothing but an exercise in futility - Even if the S.D.O. issued notices to the parties, the same would not confer any jurisdiction upon him because he had no jurisdiction to condone the delay and proceed further with the matter.* [Bhuvaneshwar Prasad @ Guddu Dixit v. State of M.P.] ...2788

Panchayat Service (Discipline and Appeal) Rules, M.P., 1999, Rules 5(b), 7 - ***Major Penalty - Procedure*** - *Petitioner working as Panchayat Karmi - Removed from his post without following procedure laid down under Rule 7 - Removal bad - Petition allowed.* [Kailash Babu Rai v. State of M.P.] ...2278

Panchayat Shiksha Karmis (Recruitment and Condition of Service) Rules, M.P. 1997 - ***Petitioners appointed as Shiksha Karmis*** - *Appointments cancelled as petitioners were close relatives of the members of selection committee - Action challenged on the ground of non-observance of principles of natural justice - Held - It is established principle that when action or orders are challenged on the ground of non-grant of hearing, mechanical interference is not to be resorted to until & unless prejudice caused due to non-grant of hearing and the effect of the final outcome is established before the court, except that an excepetion carved out in such cases where a statutory provision for grant of hearing is contemplated - Petitioners were given full & reasonable opportunity of hearing by the Commissioner and thereafter, during the course of hearing in this petition also - Petitioners were not in a position to demonstrate as to what was the prejudice caused for non-grant of hearing by the Collector - No case made out for interference - Petition dismissed.* [Shyama Dwivedi (Smt.) v. State of M.P.] ...2885

Panchayat Shiksha Karmis (Recruitment and Condition of Service) Rules, M.P. 1997 - See - *Constitution, Article 226* [Shyama Dwivedi (Smt.) v. State of M.P.] ...2885

Partnership Act (9 of 1932), Section 69 - *Suit for dissolution of partnership firm and rendition of account - Provision barring institution of suit unless partnership firm is registered - Held - Provision not applicable in*

को पंचायत कर्मी को नियुक्त करने के लिए प्राधिकृत किया – सी.ई.ओ. ने पंचायत कर्मी को नियुक्त किया – नियुक्ति को इस आधार पर चुनौती दी गई कि अधिनियम के अन्तर्गत पंचायत कर्मी की नियुक्ति केवल ग्राम पंचायत कर सकती है – अभिनिर्धारित – अधिनियम की धारा 86(2) के अन्तर्गत अभिव्यक्ति "सभी आवश्यक शक्तियों" में किसी प्राधिकारी को पंचायत के कर्तव्य, जैसे अधिनियम की धारा 70(1) के अन्तर्गत किसी पंचायत कर्मी की नियुक्ति करने के लिए प्राधिकृत करने की शक्ति भी शामिल है – इसलिए कलेक्टर को विहित प्राधिकारी के रूप में अधिनियम की धारा 86(2) के अन्तर्गत पंचायत कर्मी की नियुक्ति के लिए सी.ई.ओ., जनपद पंचायत को प्राधिकृत करने की शक्ति थी – नियुक्ति का आदेश विहित प्राधिकारी द्वारा पारित आदेश के समान माना जाना चाहिए – याचिका खारिज। (लीलावती (श्रीमति) वि. म.प्र. राज्य) ...2817

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 122 – चुनाव याचिका अधिनियम की धारा 122(2) के अनुसार तीस दिन की समाप्ति के पश्चात् निरर्थक प्रयोग के अलावा कुछ नही – यद्यपि एस.डी.ओ. ने पक्षकारों को सूचनापत्र जारी किये, यह उसको कोई अधिकारिता प्रदान नही करेगा क्योंकि उसे विलम्ब क्षमा करने और मामले में आगे कार्यवाही करने की कोई अधिकारिता नही थी। (भुवनेश्वर प्रसाद उर्फ गुड्डा दीक्षित वि. म.प्र. राज्य) ...2788

पंचायत सेवा (अनुशासन और अपील) नियम, म.प्र., 1999, नियम 5(बी), 7 – मुख्य शास्ति – प्रक्रिया – याची पंचायत कर्मी के रूप में कार्यरत – नियम 7 के अन्तर्गत अधिकथित प्रक्रिया का पालन किये बिना उसके पद से हटाया गया – हटाया जाना दोषपूर्ण – याचिका मंजूर। (कैलाश बाबू राय वि. म.प्र. राज्य) ...2278

पंचायत शिक्षा कर्मी (भर्ती और सेवा की शर्तें) नियम, म.प्र. 1997 – याचियों को शिक्षा कर्मी के रूप में नियुक्त किया गया – नियुक्तियाँ रद्द की गई क्योंकि याची चयन समिति के सदस्यों के नजदीकी रिश्तेदार थे – कृत्य को नैसर्गिक न्याय के सिद्धांतों के अननुपालन के आधार पर चुनौती दी गई – अभिनिर्धारित – यह स्थापित नियम है कि जब कृत्य या आदेशों को सुनवाई प्रदान न किये जाने के आधार पर चुनौती दी जाती है, तकनीकी हस्तक्षेप नही किया जाना चाहिए जब तक कि न्यायालय के समक्ष सुनवाई प्रदान न किये जाने से पूर्वाग्रह कारित होना और अंतिम परिणाम प्रभावित होना, स्थापित जाए, ऐसे आपवादिक मामलों के सिवाय जहाँ कि वैधानिक उपबंधों के अन्तर्गत सुनवाई का अवसर देना अपेक्षित हो – याचियों को कमिश्नर द्वारा और उसके बाद इस याचिका में सुनवाई के समय भी सुनवाई का पूर्ण और युक्तियुक्त अवसर दिया गया – याची यह प्रमाणित करने की स्थिति में नही थे कि कलेक्टर द्वारा सुनवाई प्रदान न किये जाने से क्या पूर्वाग्रह कारित हुआ – हस्तक्षेप का कोई मामला नही बनता – याचिका खारिज। (श्यामा द्विवेदी (श्रीमति) वि. म.प्र. राज्य) ...2885

पंचायत शिक्षा कर्मी (भर्ती और सेवा की शर्तें) नियम, म.प्र. 1997 – देखें – संविधान, अनुच्छेद 226 (श्यामा द्विवेदी (श्रीमति) वि. म.प्र. राज्य) ...2885

भागीदारी अधिनियम (1932 का 9), धारा 69 – भागीदारी फर्म के विघटन और हिसाब देने के लिए वाद – उपबंध वाद संस्थित करना वर्जित करता है जब तक भागीदारी फर्म रजिस्टर्ड न हो – अभिनिर्धारित – वर्तमान वाद में उपबंध लागू नही होता – रजिस्ट्रेशन का उद्देश्य तृतीय

instant suit - Purpose of registration is to protect the interests of third parties and disability is confined to suits to enforce a right arising from a contract or conferred by the Act. [Madanlal v. Smt. Badambai] ...3249

Passports Act (15 of 1967), Section 5 - *Change of Date of Birth* - *Petitioner has recourse of getting date of birth corrected in birth certificate and after having the same corrected, she may submit application with corrected entry of her birth certificate - Petitioner may also institute a civil suit for declaration about date of birth and mandatory injunction directing PIA to effect change in the passport with regard to date of birth.* [Neetu Jain (Smt.) v. Union of India] ...2841

Passports Act (15 of 1967), Section 5 - *Date of Birth in Passport* - *Petitioner made application for issuance of passport mentioning her date of birth as 15.06.1983 which was duly supported by birth certificate - Petitioner sought correction of date of birth in passport as 15.06.1982 on the basis of school certificates - Held - Rectification/correction in matter of date of birth may be made, obviously if petitioner is found entitled to seek correction/ rectification after following procedure prescribed by circulars - Since, PIA has relied upon birth certificate submitted by petitioner herself, no fault can be found with it.* [Neetu Jain (Smt.) v. Union of India] ...2841

Penal Code, (45 of 1860), Sections 52, 294, 452, 392, 500, 506 r/w 34 - See - *Sahkari Krishi Aur Gramin Vikas Bank Adhiniyam, M.P., 1999, Section 50(2)* [Arvind Kumar Bhargava v. Lalit Parashar] ...2471

Penal Code (45 of 1860), Section 84, Evidence Act, 1872, Section 105 - *Act of a person of unsoundmind - Burden of proof & degree of proof* - *Burden of proof rests on accused to prove his insanity - Burden is not so onerous as that upon the prosecution - The burden on the accused is no higher than that resting upon a plaintiff or a defendant in a civil proceeding.* [Hari Singh Gond v. State of M.P.] SC ...2764

Penal Code (45 of 1860), Section 84 - *Kinds of unsound mind persons* - *(1) An idot, (2) One made non-compos by illness, (3) A lunatic or a made man and (4) One who is drunk.* [Hari Singh Gond v. State of M.P.] SC ...2764

Penal Code (45 of 1860), Section 84 - *Mere absence of motive of a crime, how so ever atrocious it may be, cannot in the absence of plea and proof of legal insanity, bring the case within this section - Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under this section.* [Hari Singh Gond v. State of M.P.] SC ...2764

Penal Code (45 of 1860), Section 84 - *What factors are to be considered* - *The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place - In coming to that conclusion, the relevant circumstances are to be taken into*

पक्ष के हितों की रक्षा करना है और निर्योग्यता संविदा से उद्भूत या अधिनियम द्वारा प्रदत्त अधिकार को प्रवर्तित कराने के वादों तक सीमित है। (मदनलाला वि. श्रीमति बदामबाई) ...3249

पासपोर्ट अधिनियम (1967 का 15), धारा 5 – जन्मतिथि का परिवर्तन – याची को जन्म प्रमाण पत्र में सुधार करा पाने का आश्रय है और उसमें संशोधन कराने के बाद वह अपने जन्म प्रमाण पत्र की संशोधित प्रविष्टि के साथ आवेदन पेश कर सकती है – याची जन्मतिथि के बारे में घोषणा और जन्मतिथि के सबंध में पासपोर्ट में परिवर्तन प्रभावी करने के लिए पासपोर्ट जारीकर्ता प्राधिकारी को निदेशित करने के लिए आज्ञात्मक व्यादेश के लिए वाद भी संस्थित कर सकती है। (नीतू जैन (श्रीमति) वि. यूनियन ऑफ इंडिया) ...2841

पासपोर्ट अधिनियम (1967 का 15), धारा 5 – पासपोर्ट में जन्मतिथि – याची ने अपनी जन्मतिथि 15.06.1983 उल्लिखित करते हुए पासपोर्ट जारी करने के लिए आवेदन पेश किया जो जन्म प्रमाण पत्र द्वारा सम्यक् रूप से समर्थित था – याची ने विद्यालय प्रमाण पत्रों के आधार पर पासपोर्ट में जन्मतिथि 15.06.1982 करने का संशोधन चाहा – अभिनिर्धारित – जन्मतिथि के मामले में सुधार/संशोधन किया जा सकता है, यदि याची परिपत्रों द्वारा विहित प्रक्रिया का पालन करने के बाद स्पष्ट रूप से संशोधन/सुधार कराने की हकदार पायी जाती है – चूंकि पासपोर्ट जारीकर्ता प्राधिकारी ने स्वयं याची द्वारा प्रस्तुत जन्म प्रमाण पत्र पर विश्वास किया, उसका कोई दोष नही पाया जा सकता। (नीतू जैन (श्रीमति) वि. यूनियन ऑफ इंडिया) ...2841

दण्ड संहिता, (1860 का 45), धाराएँ 52, 294, 452, 392, 500, 506 सहपठित धारा 34 – देखें – सहकारी कृषि और ग्रामीण विकास बैंक अधिनियम, म.प्र., 1999, धारा 50(2), (अरविंद कुमार भार्गव वि. ललित पाराशर) ...2471

दण्ड संहिता (1860 का 45), धारा 84, साक्ष्य अधिनियम 1872, धारा 105 – विकृत चित्त व्यक्ति का कृत्य – सबूत का भार और सबूत की मात्रा – सबूत का भार अभियुक्त पर है कि उसकी विकृत चित्तता साबित करे – भार उतना अधिक नही जितना कि अभियोजन पर होता है – अभियुक्त पर सबूत का भार उससे अधिक नही होता जितना कि सिविल कार्यवाही में वादी या प्रतिवादी पर होता है। (हरीसिंह गौंड वि. म.प्र. राज्य) SC... 2764

दण्ड संहिता (1860 का 45), धारा 84 – विकृतचित्त व्यक्तियों के प्रकार – (1) जड़, (2) जो व्याधि के कारण विकृत चित्त हो गया हो, (3) पागल या विक्षिप्ति व्यक्ति तथा (4) जो मत्त हो। (हरीसिंह गौंड वि. म.प्र. राज्य) SC... 2764

दण्ड संहिता (1860 का 45), धारा 84 – किसी अपराध के हेतु का अभाव मात्र, चाहे वह कितना भी नृशंस हो, विधिक विकृत चित्तता के अभिवचन और सबूत के अभाव में, मामले को इस धारा के अधीन नही ला सकता – मनोरोगी का केवल मस्तिष्क की असामान्यता या आंशिक भ्रम, अप्रतिरोध्य आवेग या बाध्यकारी व्यवहार इस धारा के अन्तर्गत कोई संरक्षण प्राप्त करने के लिए समर्थ नही। (हरीसिंह गौंड वि. म.प्र. राज्य) SC... 2764

दण्ड संहिता (1860 का 45), धारा 84 – किन कारकों पर विचार किया जाता है – यह विनिश्चित करने के लिए कि क्या इस धारा का लाभ दिया जाना चाहिए या नही निर्णायक समय वह तात्विक समय है जब अपराध कारित किया हो – इस निष्कर्ष पर आने के लिए सुसंगत

consideration - It would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. [Hari Singh Gond v. State of M.P.] SC ...2764

Penal Code (45 of 1860), Section 84 - *When provisions are attracted - The benefit is available only after it is proved that at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act, he was doing or that even if he did not know it, it was either wrong or contrary to law then this section must be applied.* [Hari Singh Gond v. State of M.P.] SC ...2764

Penal Code (45 of 1860), Section 84 - *When the provisions are not attracted - Explained.* [Hari Singh Gond v. State of M.P.] SC ...2764

Penal Code (45 of 1860), Section 97 - *Right of private defence of property - Incident occurred in day time in the field of appellants - Appellants also suffered number of serious injuries - Held - Right of private defence of property occurred to appellants. - Prosecution has not explained the injuries sustained by the appellants - Trial Court committed illegality by reading and considering the evidence of counter case - Conviction and sentence set-aside - Appeal allowed.* [Narayan v. State of M.P.] ...2401

Penal Code (45 of 1860), Sections 147, 148, 323, 395 r/w 149, Criminal Procedure Code, 1973, Sections 156, 202(2) proviso - *Procedure when allegation in the complaint are exclusively triable by Sessions Court - Held - The scheme of the provisions and the language employed in the proviso show that conducting of inquiry in complaint case is not left to the discretion of the magistrate concerned - Magistrate has no discretion except to call upon the complainant to produce all his witnesses and examine them on oath - The provisions of Section 202(2) of Cr.P.C. are mandatory.* [Nanjiram v. State of M.P.] ...2737

Penal Code (45 of 1860), Sections 147, 149, 294, 341, 323, 506-B, 307, Criminal Procedure Code, 1973, Sections 169 & 482, Constitution, Article 20(2) - ***Powers of magistrate when Final Report is in favour of the accused persons*** - *It is true that the Final Report is not binding on the magistrate and if the magistrate differs from the opinion of the I.O., he can take cognizance or order for further investigation, but that action of magistrate is judicial action and at that stage while taking decision on the Final Report the magistrate has to act judicially as a court - When a final report is submitted in favour of the accused persons and the investigation agency is of the view that no case is made out for prosecuting the accused and prima facie, evidence is defiance, if the magistrate wants to hear complainant it is obligatory on the part of the magistrate to also hear the accused person. If any protest petition is filed it has to be treated as a complaint and law requires magistrate to record statement of complainant and his witnesses.* [Rajkumar v. State of M.P.] ...2478

परिस्थितियाँ विचार में ली जाना चाहिए – केवल अपराध की प्रकृति पर से किये गये तर्कों से विकृत्त चित्तता की प्रतिरक्षा स्वीकार करना जोखिमपूर्ण होगा। (हरीसिंह गौंड वि. म.प्र. राज्य)SC... 2764

दण्ड संहिता (1860 का 45), धारा 84 – उपबंध कब आकृष्ट होते हैं – यह साबित करने के पश्चात् ही लाभ उपलब्ध होता है कि कृत्य करते समय अभियुक्त मस्तिष्क के रोग के कारण तर्क की ऐसी त्रुटि से ग्रस्त था कि उसे उस कृत्य की प्रकृति या गुण का ज्ञान नही था जो वह कर रहा था या फिर यदि उसे यह ज्ञान नही था कि यह गलत या विधि के प्रतिकूल था, तब यह धारा लागू की जानी चाहिए। (हरीसिंह गौंड वि. म.प्र. राज्य) SC... 2764

दण्ड संहिता (1860 का 45), धारा 84 – उपबंध कब आकृष्ट नही होते – स्पष्ट किया। (हरीसिंह गौंड वि. म.प्र. राज्य) SC... 2764

दण्ड संहिता (1860 का 45), धारा 97 – सम्पत्ति की प्राइवेट प्रतिरक्षा का अधिकार – घटना दिन के समय अपीलार्थियों के खेत में घटित हुई – अपीलार्थी भी कई गम्भीर क्षतियों से पीड़ित हुए – अभिनिर्धारित – सम्पत्ति की प्राइवेट प्रतिरक्षा का अधिकार अपीलार्थियों को प्राप्त – अभियोजन ने अपीलार्थियों को आई क्षतियों का स्पष्टीकरण नहीं दिया – विचारण न्यायालय ने प्रति–मामले की साक्ष्य पढ़कर और विचार में लेकर अवैधता कारित की – दोषसिद्धि और दण्डादेश अपास्त – अपील मंजूर। (नारायण वि. म.प्र. राज्य) ...2401

दण्ड संहिता (1860 का 45), धाराएँ 147, 148, 323, 395 सहपठित 149, दण्ड प्रक्रिया संहिता, 1973, धाराएँ 156, 202(2) परन्तुक – प्रक्रिया जब परिवाद में वर्णित आरोप अनन्यतः सेशंन न्यायालय द्वारा विचारणीय है – अभिनिर्धारित – उपबंधों की स्कीम और परन्तुक में प्रयुक्त भाषा दर्शित करते हैं कि परिवाद पर संस्थित मामले में जाँच करना सम्बन्धित मजिस्ट्रेट के विवेक पर नही छोड़ा गया है – मजिस्ट्रेट को, परिवादी को अपने सभी साक्षियों को पेश करने और उनकी शपथ पर परीक्षा कराने के लिए बुलाने के अतिरिक्त, कोई विवेकाधिकार नही है – द.प्र.सं. की धारा 202(2) के उपबंध आज्ञापक हैं। (ननंजीराम वि. म.प्र. राज्य) ...2737

दण्ड संहिता (1860 का 45), धाराएँ 147, 149, 294, 341, 323, 506–बी, 307, दण्ड प्रक्रिया संहिता, 1973, धाराएँ 169 व 482, संविधान, अनुच्छेद 20(2) – मजिस्ट्रेट की शक्तियाँ जब अंतिम रिपोर्ट अभियुक्त व्यक्तियों के पक्ष में हो – यह सही है कि अंतिम रिपोर्ट मजिस्ट्रेट पर बंधनकारी नही है और यदि मजिस्ट्रेट का अनुसंधान अधिकारी से भिन्न मत है तो वह संज्ञान ले सकता है या आगे और अनुसंधान के लिए आदेश दे सकता है, किन्तु मजिस्ट्रेट का वह कृत्य न्यायिक कृत्य हो और अंतिम रिपोर्ट पर निर्णय लेते समय मजिस्ट्रेट को न्यायालय के रूप में न्यायिकतः कार्य करना होता है – जब अंतिम रिपोर्ट अभियुक्त व्यक्तियों के पक्ष में दी जाती है और अनुसंधान एजेंसी का मत है कि अभियुक्त को अभियोजित करने के लिए कोई मामला नही बनता है और प्रथम दृष्ट्या साक्ष्य उपेक्षित है, यदि मजिस्ट्रेट परिवादी को सुनना चाहता है तो मजिस्ट्रेट के लिए यह आबद्धकर है कि अभियुक्त को भी सुने। यदि कोई अभ्यापत्ति याचिका पेश की जाती है तो उसे परिवाद के रूप में मानना पड़ता है और विधि मजिस्ट्रेट से अपेक्षा करती है कि परिवादी और उसके साक्षियों के कथन अभिलिखित करे। (राजकुमार वि. म.प्र. राज्य) ...2478

Penal Code (45 of 1860), Sections 166, 294, 451 - See - *Criminal Procedure Code, 1973, Section 197* [Shameem Khatoon (Smt.) v. R.P. Ramanwal] ...*89

Penal Code, (45 of 1860), Section 287 - See -*Criminal Procedure Code, 1973, Section 357(3)* [Mahesh v. State of M.P.] ...*79

Penal Code, (45 of 1860), Sections 294, 452, 392, 500, 506 r/w Section 34 - See - *Sahkari Krishi Aur Gramin Vikas Bank Adhiniyam, M.P., 1999, Section 50(2)* [Arvind Kumar Bhargava v. Lalit Parashar] ...2471

Penal Code (45 of 1860), Section 300, Exception 4 - ***Ingredients*** *- It has to be established that act was committed without premeditation, in a sudden fight, in heat of passion upon sudden quarrel and without the offender having taken undue advantage and not having acted in a cruel or unusual manner and fight must have been with person killed.* [Rakesh v. State of M.P.] (SC)...2153

Penal Code (45 of 1860), Section 300 Exception 4 - ***Murder or Culpable Homicide not amounting to murder*** *- Appellant No.4 had scuffled with deceased and appellant No.2 picked up a spade and dealt repeated blows from its blunt side on the head of deceased - Lacerated wounds with depressed fractures of skull bone and laceration of brain found - Lower jaw was also broken at three places - Held - For bringing in operation the Exception 4 of Section 300, it has to be established that act was committed without premeditation in a sudden fight in heat of passion upon a sudden quarrel without offender taking undue advantage and having not acted in cruel or unusual manner - Appellant No.2 has caused death of deceased with intention of causing death - Conviction of appellant No.2 u/s 302 upheld.* [Tok Singh v. State of M.P.] ...2980

Penal Code (45 of 1860), Section 300, Exception 4, Sections 302, 304 Part 1 - ***Murder or Culpable Homicide not amounting to murder*** *- For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel without premeditation - It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner - There was no enmity between the parties - There occurred a sudden fight, the appellant stabbed the deceased thrice repeatedly on vital parts - Deceased has not exercised any force against the appellant - Appellant applied the knife for causing the bodily injuries on the person of deceased which were likely to cause death - The case of appellant falls within u/s 304 Part I and not u/s 302.* [Pramod Kumar v. State of M.P.] ...2702

Penal Code (45 of 1860), Section 302, Arms Act, 1959, Sections 25 & 27 - *Allegation that appellants chased deceased and appellant Ganesh fired on deceased and committed his murder - Trial court convicted appellants u/s 302 r/w Section 34 I.P.C. and Sections 25 & 27 Arms Act - Appeal filed - Held - Evidence of eye witnesses do not inspire confidence and their presence*

दण्ड संहिता, (1860 का 45), धाराएँ 166, 294, 451 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 197 (शमीम खातून (श्रीमति) वि. आर.पी. रमनवाल) ---*89

दण्ड संहिता, (1860 का 45) धारा 287 – देखें – दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 357(3), (महेश वि. म.प्र. राज्य) ...*79

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 190 व 197 – देखें –सहकारी कृषि और ग्रामीण विकास बैंक अधिनियम, म.प्र., 1999, धारा 50(2) (अरविंद कुमार भार्गव वि. ललित पाराशर) ...2471

दण्ड संहिता (1860 का 45), धारा 300, अपवाद 4 – संघटक – यह स्थापित करना पड़ता है कि कार्य बिना किसी पूर्व चिन्तन के, आकस्मिक लड़ाई में, अचानक झगड़े पर आवेश की तीव्रता में और अपराधी के अनुचित लाभ लिये बिना और क्रूर या असामान्य तरीके से व्यवहार न करते हुए किया गया था और लड़ाई मृत व्यक्ति के साथ होनी चाहिए थी। (राकेश वि. म.प्र. राज्य) (SC)...2153

दण्ड संहिता (1860 का 45), धारा 300 अपवाद 4 – हत्या या हत्या की कोटि में न आने वाला सदोष मानव वध – अपीलार्थी क्र. 4 ने मृतक के साथ हाथापाई की और अपीलार्थी क्र. 2 ने फावड़ा उठाया और उसकी भोथरी तरफ से मृतक के सिर पर कई प्रहार किये – सिर की हड्डी के दबे हुए अस्थि भंग के साथ चिरे–फटे घाव और मस्तिष्क चिरा पाया गया – निचला जबड़ा भी तीन स्थानों पर टूटा हुआ था – अभिनिर्धारित – धारा 300 के अपवाद 4 को प्रवर्तन में लाने के लिए यह स्थापित करना पड़ता है कि कार्य बिना किसी पूर्वचिन्तन के अचानक झगड़ने पर आवेश की तीव्रता में अचानक लड़ाई में किया गया अपराधी के अनुचित लाभ लिये बिना और क्रूर या असामान्य तरीके से कार्य नही करते हुए – अपीलार्थी क्र. 2 ने मृत्यु कारित करने के आशय से मृतक की मृत्यु कारित की – धारा 302 के अन्तर्गत अपीलार्थी क्र. 2 की दोषसिद्धि पुष्ट की गई। (तोक सिंह वि. म.प्र. राज्य) ...2980

(1860 का 45), धारा 300, अपवाद 4, धाराएँ 302, 304 भाग 1 – हत्या या हत्या की कोटि में न आने वाला सदोष मानव वध – अपवाद 4 लागू करने के लिए यह दर्शाना पर्याप्त नही है कि अचानक झगड़ा पूर्व चिन्तन के बिना हुआ था – यह भी दर्शाना चाहिए कि अपराधी ने अनुचित लाभ नही लिया या क्रूर या असामान्य तरीके से कार्य किया – पक्षकारों के मध्य कोई शत्रुता नही थी – अचानक लड़ाई हुई, अपीलार्थी ने मृतक के मर्मस्थलों पर लगातार तीन प्रहार किये – मृतक ने अपीलार्थी के विरुद्ध किसी बल का प्रयोग नहीं किया – अपीलार्थी ने चाकू से मृतक के शरीर पर शारीरिक क्षतियाँ कारित कीं जो मृत्यु कारित करने के लिए संभाव्य थीं – अपीलार्थी का मामला धारा 304 भाग 1 के अन्तर्गत आता है न कि धारा 302 के अन्तर्गत। (प्रमोद कुमार वि. म.प्र. राज्य) ...2702

दण्ड संहिता (1860 का 45), धारा 302, आयुध अधिनियम, 1959, धाराएँ 25 व 27 – आरोप है कि अपीलार्थियों ने मृतक का पीछा किया और अपीलार्थी गनेश ने मृतक पर गोली चलाई और उसकी हत्या की – विचारण न्यायालय ने अपीलार्थियों को भा.द.सं. की धारा 302 सहपठित धारा 34 और आयुध अधिनियम की धारा 25 व 27 के अन्तर्गत दोषसिद्ध किया – अपील पेश की गई – अभिनिर्धारित – प्रत्यक्षदर्शी साक्षियों का साक्ष्य विश्वास प्रेरित नही करता है और उनकी घटना के समय घटना स्थल

on spot at the time of incident and the fact that they saw the appellant Ganesh fired on deceased is doubtful - Prosecution has not examined material witnesses which leads to the presumption against prosecution - No explanation by prosecution that why the weapons & empty cartridge were sent after 10 days to FSL - No evidence the weapons which were seized from possession of the appellants, the same were sent for analysis - Appeal allowed - Appellants acquitted. [Ganesh @ Ganesha @ Ganesh Prasad v. State of M.P.] ...3026

Penal Code (45 of 1860), Section 302, Criminal Procedure Code, 1973, Section 374(2) - *Circumstantial Evidence - Appellant convicted for offence punishable u/s 302 IPC, on the basis of circumstantial evidence - Held - Dead body of the deceased recovered from the appellant's house and recovery of Mangalsutra at his instance also proved - These two strongest circumstances coupled with suspicious conduct of the appellant, unerringly point out the guilt towards the appellant and if circumstances are taken into consideration cumulatively, forms a complete chain and there is no escape of appellant from any corner - Appeal dismissed.* [Gudda @ Raho @ Gajdhar v. State of M.P.] ...2394

Penal Code (45 of 1860), Section 302 - *Deceased was found lying on ground in badly injured condition - Witnesses saw appellant running with knif after commission of offence and on enquiry deceased mentioned name of appellant - One witness saw appellant quarrelling with deceased and running away - In identification parade witnesses identified appellant - Nothing has been brought in cross-examination to discredit the statement of witnesses - Conviction and sentence of life imprisonment upheld - Appeal dismissed.* [Vikas v. State of M.P.] ...2416

Penal Code (45 of 1860), Section 302, Evidence Act, 1872, Section 3 - ***Murder*** - *Reliability of child witness - The testimony of a child witness should be accepted with great caution and circumspection, because it is common experience that a child witness is susceptible to tutoring and may thereby be made to depose about the things which he/she has not seen - On being tutored, a child witness goes on repeating like a parrot - Such witnesses become dangerous witnesses - As a rule of prudence, if the court puts such evidence to close scrutiny and is conviced about its' quality and reliability, the conviction can be based by accepting the deposition of a child witness.* [Madan Singh v. State of M.P.] ...3299

Penal Code (45 of 1860), Section 302, Evidence Act, 1872, Section 32 - ***Dying declaration*** - *Appellant alleged to have poured kerosene oil over his wife and set her ablaze - Executive magistrate recorded her dying declaration after doctor testified that she is fully conscious and fit to give dying declaration - Held - Dying declaration can form the sole basis of conviction if found to be true and voluntary - Appeal dismissed.* [Raju @ Rajendra Singh v. State of M.P.] ...3015

पर उपस्थिति और यह तथ्य कि उन्होंने अपीलार्थी गनेश को मृतक पर गोली चलाते देखा, शंकास्पद है – अभियोजन ने सारवान साक्षियों का परीक्षण नही कराया जिससे अभियोजन के विरुद्ध उपधारणा की जाएगी – अभियोजन द्वारा कोई स्पष्टीकरण नही कि आयुध और खाली कारतूस न्यायालयिक विज्ञान प्रयोगशाला को 10 दिन बाद क्यों भेजे गये – कोई साक्ष्य नही कि आयुध, जो अपीलार्थियों के कब्जे से अभिग्रहीत किये गये, वही विश्लेषण के लिए भेजे गये – अपील मंजूर – अपीलार्थियों को दोषमुक्त किया गया। (गनेश उर्फ गनेशा उर्फ गनेश प्रसाद वि. म.प्र. राज्य) ...3026

दण्ड संहिता (1860 का 45), धारा 302, दण्ड प्रक्रिया संहिता, 1973, धारा 374(2) – परिस्थितिजन्य साक्ष्य – अपीलार्थी परिस्थितिजन्य साक्ष्य के आधार पर भा.द.सं. की धारा 302 के अन्तर्गत दण्डनीय अपराध के लिए दोषसिद्ध – अभिनिर्धारित – मृतक का शव अपीलार्थी के घर से बरामद और उसकी प्रेरणा पर मंगलसूत्र की बरामदगी भी साबित – ये दो प्रबल परिस्थितियाँ अपीलार्थी के शंकास्पद आचरण के साथ मिलकर अचूक रूप से अपीलार्थी की ओर दोष के संबंध में बताती है और यदि परिस्थितियों को समग्र रूप से विचार में लिया जाता है, तो एक पूर्ण श्रृंखला बनाती हैं और अपीलार्थी की किसी भी कोण से बचने की संभावना नहीं है – अपील खारिज। (गुड्डा उर्फ राहो उर्फ गज़धर वि. म.प्र. राज्य) ...2394

दण्ड संहिता (1860 का 45), धारा 302 – मृतक बुरी तरह क्षतिग्रस्त अवस्था में जमीन पर पड़ा हुआ पाया गया – साक्षियों ने अपीलार्थी को अपराध करने के बाद चाकू सहित भागते हुए देखा और पूछताछ पर मृतक ने अपीलार्थी का नाम उल्लिखित किया – एक साक्षी ने अपीलार्थी को मृतक के साथ झगड़ते हुए और दूर भागते हुए देखा – शनाख्त परेड में साक्षियों ने अपीलार्थी की शनाख्त की – साक्षियों के कथन पर अविश्वास करने के लिए प्रतिपरीक्षण में कुछ नहीं लाया गया – दोषसिद्धि और आजीवन कारावास के दण्डादेश की पुष्टि – अपील खारिज। (विकास वि. म.प्र. राज्य) ...2416

दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम, 1872, धारा 3 – हत्या – बाल साक्षी की विश्वसनीयता – बाल साक्षी का अभिसाक्ष्य बड़ी सावधानी और सतर्कता से स्वीकार किया जाना चाहिए क्योंकि यह सामान्य अनुभव है कि बाल साक्षी को सिखाना–पढ़ाना संभव है और वह उस चीज के बारे में जो उसने नही देखी है, साक्ष्य दे सकता/सकती है – सिखाने–पढ़ाने पर, बाल साक्षी तोते की तरह दोहराने लगता है – ऐसे साक्षी जोखिमपूर्ण साक्षी बन जाते हैं – सामान्य प्रज्ञा के नियम के अनुसार यदि न्यायालय ऐसी साक्ष्य की सूक्ष्म जाँच करता है और उसके गुण और विश्वसनीयता पर विश्वास करता है तो दोषसिद्धि बाल साक्षी के साक्ष्य पर आधारित हो सकती है। (मदन सिंह वि. म.प्र. राज्य) ...3299

दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम, 1872, धारा 32 – मृत्युकालिक कथन – अपीलार्थी ने कथित रूप से अपनी पत्नी पर मिट्टी का तेल डाला और उसको आग लगा दी – कार्यपालिक मजिस्ट्रेट ने चिकित्सक के यह प्रमाणित करने के बाद कि वह मृत्युकालिक कथन देने के लिए पूर्णतः सचेतन और स्वस्थ है, उसका मृत्युकालिक कथन अभिलिखित किया – अभिनिर्धारित – मृत्युकालिक कथन दोषसिद्धि का एकमात्र आधार बनाया जा सकता है यदि सत्य और स्वैच्छिक होना पाया जाए – अपील खारिज। (राजू उर्फ राजेन्द्र सिंह वि. म.प्र. राज्य) ...3015

Penal Code (45 of 1860), Section 302, Evidence Act, 1872, Section 32 - ***Dying Declaration*** - *Appellant had burnt his wife & son by pouring kerosene oil over them - Dying declaration of wife was recorded at Hospital by Executive Magistrate - Wife & son succumbed to burn injuries - Appellant has been convicted for committing murder of his wife - Conviction challenged in appeal - Held - Presence of appellant on the scene at the time of occurrence is proved by reliable evidence - Magistrate & Doctor deposed that deceased remained fully conscious during her statement and was in a fit condition to give statement - No inconsistency in the timings of recording of dying declaration and medical examination - No inconsistency in dying declaration and Dehati Nalishi - No ground to suspect that magistrate would himself manipulate the dying declaration as he had no animus against appellant - Declaration is true and voluntarily - Conviction upheld - Appeal dismissed.* [Avinash @ Gudda v. State of M.P.] ...2431

Penal Code (45 of 1860), Section 302, Evidence Act, 1872, Section 106 - ***Murder - Circumstantial Evidence - Burden of Proof*** - *It is established that just before death of deceased, there had been quarrel between her and her husband/ appellant inside their house and appellant had rushed to pick up an axe - Incised wounds found on the body of deceased - Held - Appellant and deceased were last seen together inside their house and soon thereafter wife was found dead due to serious injuries - Burden was on appellant to offer reasonable explanation as to how his wife met with homicidal death inside his dwelling house - Appellant did not offer any explanation - Appellant rightly convicted u/s 302 IPC - Appeal dismissed.* [Bihari v. State of M.P.] ...2666

Penal Code (45 of 1860), Section 302 - *Eye-witness, who is a son of deceased, was present and witnessed the occurrence of deadly assault on his parents by appellant - Corroborated from F.I.R. lodged by him and also corroborated from testimony of witnesses to whom the incident is narrated soon after the incident - No reason why he would twice deposed against appellant - It does not appeal to reason that he would falsely implicate the appellant who is real uncle - Witness cannot be disbelived merely on ground that he has been declared hostile by the prosecution - Conviction and sentence u/s 302 affirmed - Appeal dismissed.* [Ramsiya v. State of M.P.] ...3010

Penal Code (45 of 1860), Section 302 - ***Murder*** - *Appellants assaulted deceased with deadly weapons - Evidence of eye witness corroborated by report of F.S.L. - In doctors report appellants were not shown as assailants - Held - Primary duty of doctor is to treat a patient and not to find out by whom the injury was caused - Non-disclosure of names to doctor is of no consequence - Conviction and sentence affirm - Appeal dismissed.* [Ashok v. State of M.P.] ...2997

Penal Code (45 of 1860), Section 302 - ***Murder*** - *Circumstantial*

दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम, 1872, धारा 32 – मृत्युकालिक कथन – अपीलार्थी ने अपनी पत्नी और पुत्र पर मिट्टी का तेल डालकर उन्हें जला दिया – कार्यपालिक मजिस्ट्रेट द्वारा पत्नी का मृत्युकालिक कथन अस्पताल में अभिलिखित किया गया – पत्नी और पुत्र की मृत्यु जलने से आई क्षतियों से हो गई – अपीलार्थी को उसकी पत्नी की हत्या के लिए दोषसिद्ध किया गया – दोषसिद्धि को अपील में चुनौती दी गई – अभिनिर्धारित – घटना के समय घटना स्थल पर अपीलार्थी की उपस्थिति विश्वसनीय साक्ष्य द्वारा सिद्ध – मजिस्ट्रेट और चिकित्सक ने बयान दिया कि मृतक कथन देते समय पूरी तरह होश में थी और कथन देने के लिए उपयुक्त अवस्था में थी – मृत्युकालिक कथन अभिलिखित करने और चिकित्सकीय परीक्षण के समय में कोई विसंगति नही – मृत्युकालिक कथन और देहाती नालिशी में कोई विसंगति नही – शंका करने का कोई आधार नही कि मजिस्ट्रेट ने स्वयं मृत्युकालिक कथन में हेरफेर किया होगा क्योंकि वह अपीलार्थी के विरुद्ध कोई विद्वेश नही रखता था – मृत्युकालिक कथन सही एवं स्वेच्छया – दोषसिद्धि पुष्ट की गई – अपील खारिज। (अविनाश उर्फ गुड्डा वि. म.प्र. राज्य) ...2431

दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम, 1872, धारा 106 – हत्या – परिस्थितिजन्य साक्ष्य – सबूत का भार – यह स्थापित किया गया कि मृतक की मृत्यु के ठीक पहले उसके और उसके पति/अपीलार्थी के मध्य उनके घर के अन्दर झगड़ा हुआ था और अपीलार्थी कुल्हाड़ी उठाने के लिए दौड़ा था – मृतक के शरीर पर छिन्न घाव पाये गये – अभिनिर्धारित – अपीलार्थी और मृतक अंतिमतः एक साथ उनके घर के अन्दर देखे गये और उसके तुरन्त बाद पत्नी गम्भीर क्षतियों के कारण मृत पायी गयी – तर्कसंगत स्पष्टीकरण देने का भार अपीलार्थी पर था कि कैसे उसकी पत्नी उसके निवास गृह के अन्दर मानव वध से मृत्यु को प्राप्त हुई – अपीलार्थी ने कोई स्पष्टीकरण प्रस्तुत नही किया – अपीलार्थी भा.द.सं. की धारा 302 के अन्तर्गत सही रूप से दोषसिद्ध किया गया – अपील खारिज। (बिहारी वि. म.प्र. राज्य) ...2666

दण्ड संहिता (1860 का 45), धारा 302 – प्रत्यक्षदर्शी साक्षी, जो मृतक का पुत्र है, घटनास्थल पर उपस्थित था और अपीलार्थी द्वारा उसके माता–पिता पर घातक हमला करने की घटना का साक्षी था – उसके द्वारा दर्ज कराई गई एफ.आई.आर. से सम्पुष्टि हुई और साक्षियों के अभिसाक्ष्य से भी पुष्टि हुई जिन्हें घटना के तत्काल बाद घटना बतायी गई – इसका कोई कारण नही कि वह दो बार अपीलार्थी के विरुद्ध बयान देवे – यह कारण भी मानने योग्य नही है कि अपीलार्थी जो कि सगा चाचा है उसे वह मामले में झूठा फसायेगा – साक्षी पर केवल इस आधार पर अविश्वास नही किया जा सकता है कि उसे अभियोजन ने पक्षद्रोही घोषित किया – धारा 302 के अन्तर्गत दोषसिद्धि और दण्डादेश की पुष्टि – अपील खारिज। (रामसिया वि. म.प्र. राज्य) ...3010

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – अपीलार्थियों ने मृतक पर घातक आयुध से हमला किया – प्रत्यक्षदर्शी साक्षी के साक्ष्य की न्यायालयिक विज्ञान प्रयोगशाला की रिपोर्ट द्वारा पुष्टि की गई – चिकित्सक की रिपोर्ट में अपीलार्थियों को हमलावर के रूप में नही दर्शाया गया – अभिनिर्धारित – चिकित्सक का प्राथमिक कार्य मरीज का इलाज करना है न कि यह पता लगाना कि क्षतियाँ किसके द्वारा कारित की गई – चिकित्सकों को नाम प्रकट न करने का कोई परिणाम नही है – दोषसिद्धि और दण्डादेश की पुष्टि – अपील खारिज। (अशोक वि. म.प्र. राज्य) ...2997

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – परिस्थितिजन्य साक्ष्य – अपीलार्थी

Evidence - Deceased, wife of appellant died in the house - Cause of death was asphyxia caused by strangulation - Ligature mark and abrasions found on the neck of deceased - Son of deceased clearly stated that appellant was in house and had beaten deceased with kicks and fists - Held - Appellant was in house and was in room and gave beating to deceased - Body was removed from first floor - Blood stains were found on pillow - No report was lodged by appellant or any of his family members - Appellant wanted to screen offence - Appellant guilty of committing murder - Appeal dismissed. [Sanjay Vishwakarma v. State of M.P.] ...2693

Penal Code (45 of 1860), Section 302 - *Murder - Dying Declaration - Reliability - Appellant convicted only on the basis of dying declaration - Held - When there is doubtful evidence whether the maker of dying declaration i.e. deceased was fully conscious or not - Court can consider the medical evidence and if the court is not satisfied that the deceased was in fit mental condition or there are contradictions in the opinion of the doctor vis-à-vis opinion of the eye witnesses - In such circumstances in a particular case that requires corroboration and if there is no corroborative evidence, the same can be discarded - If the evidence is reliable and trustworthy the conviction can be based thereon - Appeal allowed - Appellant acquitted.* [Karan Singh v. State of M.P.] ...2698

Penal Code (45 of 1860), Section 302 - *Murder - Medical Evidence - Witnesses stated that injury on head was caused by Lathi - In M.L.C., Doctor opined that injury was incised wound and was caused by sharp edged weapon - In postmortem, Doctor found lacerated wound - Held - Deceased was in serious condition when he was brought to Hospital - Doctor hastily and cursorily examined his injuries whereas Autopsy Doctor examined injuries minutely - Evidence of Autopsy Doctor more reliable if examined in juxtaposition of evidence of eye witnesses - No discrepancy in oral and medical evidence.* [Bhaiyalal v. State of M.P.] ...3309

Penal Code (45 of 1860), Section 302 r/w Section 34, Criminal Procedure Code, 1973, Section 378(1) - *Appeal against acquittal - While dealing with a case of acquittal, it is well known, the High Court shall not ordinarily overturn a judgment if two views are possible - Appeal allowed.* [State of M.P. v. Ballu @ Vinod Kumar] ...2420

Penal Code, (45 of 1860), Section 302 - See - *Jail Manual, Rule 361(1) & 361(6)* [Chhiddu @ Kanchhedi Lal v. State of M.P.] ...2860

Penal Code (45 of 1860), Sections 302, 304 - *Murder or culpable homicide not amounting to murder - Appellant assaulted the deceased by means of knife on account of peels of eggs - Case would fall under Exception 4 to Section 300 - Appellant guilty of offence u/s 304 Part 1 and not 302 - Appeal allowed.* [Rakesh v. State of M.P.] (SC)...2153

की पत्नी (मृतक) की मृत्यु घर में हुई – मृत्यु दम घुटने से कारित हुई थी – मृतक के गले पर गला घोंटने के निशान और खरोंचें पायी गई – मृतक के पुत्र ने स्पष्ट रूप से कथन किया कि अपीलार्थी घर के अन्दर था और उसने मृतक को लात और घूसों से मारा था – अभिनिर्धारित – अपीलार्थी घर के अन्दर कमरे में था और मृतक को मारा था – मृतक का शरीर प्रथम तल से हटाया गया – तकिये पर खून के धब्बे पाये गये – अपीलार्थी या उसके परिवार के किसी भी सदस्य ने कोई रिपोर्ट दर्ज नही करवाई – अपीलार्थी अपराध को छिपाना चाहता था – अपीलार्थी हत्या कारित करने का दोषी – अपील खारिज। (संजय विश्वकर्मा वि. म.प्र. राज्य) ...2693

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – मृत्युकालिक कथन – विश्वसनीयता – अपीलार्थी केवल मृत्युकालिक कथन के आधार पर दोषसिद्ध किया गया – अभिनिर्धारित – जब यह साक्ष्य शंकास्पद हो कि मृत्युकालिक कथन करने वाला अर्थात् मृतक पूर्णतः सचेत था या नही – न्यायालय चिकित्सकीय साक्ष्य पर विचार कर सकता है और यदि न्यायालय संतुष्ट नही है कि मृतक स्वस्थ मानसिक स्थिति में था या प्रत्यक्षदर्शी साक्षियों की राय और चिकित्सक की राय में विरोधाभाष है – इन परिस्थितियों में किसी विशिष्ट मामले में सम्पुष्टिकारक साक्ष्य अपेक्षित है और यदि कोई सम्पोषक साक्ष्य नही है, यह अमान्य की जा सकती है – यदि साक्ष्य विश्वसनीय है तो दोषसिद्धि उस पर आधारित की जा सकती है – अपील मंजूर – अपीलार्थी दोषमुक्त। (करन सिंह वि. म.प्र. राज्य) ...2698

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – चिकित्सीय साक्ष्य – साक्षियों ने कथन किया कि सिर पर क्षति लाठी से कारित की गई – एम.एल.सी. में चिकित्सक ने राय दी कि क्षति छिन्न घाव थी और तेज धार वाले आयुध से कारित की गई – शव परीक्षण में चिकित्सक ने विदीर्ण घाव पाये – अभिनिर्धारित – मृतक, जब वह चिकित्सालय में लाया गया, गम्भीर अवस्था में था – चिकित्सक ने जल्दबाजी से और सरसरी तौर पर उसकी क्षतियों की जाँच की जबकि शव–परीक्षा चिकित्सक ने क्षतियों की सूक्ष्मतया जाँच की – शव–परीक्षा चिकित्सक की साक्ष्य अधिक विश्वसनीय है यदि प्रत्यक्षदर्शी साक्षियों की साक्ष्य के सानिध्य में परीक्षा की जाए – मौखिक और चिकित्सीय साक्ष्य में कोई विसंगति नही। (भैयालाल वि. म.प्र. राज्य) ...3309

दण्ड संहिता (1860 का 45), धारा 302 सहपठित धारा 34, दण्ड प्रक्रिया संहिता, 1973, धारा 378(1) – दोषमुक्ति के विरुद्ध अपील – दोषमुक्ति के मामले पर कार्यवाही करते समय, यह सुविख्यात है, उच्च न्यायालय किसी निर्णय को साधारणतः नहीं उलटेगा यदि दो विचार संभव हों – अपील मंजूर। (म.प्र. राज्य वि. बल्लू उर्फ विनोद कुमार) ...2420

दण्ड संहिता, (1860 का 45), धारा 302 – देखें – जेल मेन्युअल, नियम 361(1) व 361(6), (छिद्दू उर्फ कन्छेदी लाल वि. म.प्र. राज्य) ...2860

दण्ड संहिता (1860 का 45), धारा 302, 304 – हत्या या हत्या की कोटि में न आने वाला आपराधिक मानव वध – अपीलार्थी ने अण्डों के छिलकों के कारण मृतक पर चाकू के साधन द्वारा हमला किया – मामला धारा 300 के अपवाद 4 के अन्तर्गत आयेगा – अपीलार्थी धारा 304 भाग 1 के अधीन अपराध का दोषी न कि धारा 302 के – अपील मंजूर। (राकेश वि. म.प्र. राज्य)(SC)...2153

Penal Code (45 of 1860), Sections 302, 304 Part I - *Murder or Culpable Homicide not amounting to murder - Deceased sitting along with her husband - Sundarlal was accompanied by his son Ramsa (appellant), Pintoo and Ramdas came there - Sundarlal hurled abuses and all of them assaulted deceased by means of axe - Appellant Ramsa has been convicted u/s 302 IPC whereas other accused persons were acquitted - Held - No evidence that accused and complainant party were on inimical terms - Incident took place in a spur of moment - Act of appellant falls under Exception 4 of Section 300 - Appellant acquitted u/s 302 and convicted u/s 304 Part I - Sentenced to 8 years rigorous imprisonment - Appeal allowed in part.* [Ramsa v. State of M.P.] ...2662

Penal Code (45 of 1860), Section 302, 304 Part-II - *Murder or culpable homicide not amounting to murder - Accused caused serious injuries on skull of his brother by heavy log like 'Kharaliya' - Eye-witness saw the accused striking over the head, chin and chest of deceased - F.I.R. lodged by father - Narration of incident by the eye-witness corroborated by other witnesses - Held - Accused caused number of injuries on vital part of body i.e. scalp - The injuries so caused clearly indicate the intention of the appellant to commit murder of the deceased - Act of appellant falls u/s 302 - Conviction and sentence affirmed - Appeal dismissed.* [Nasa v. The State of M.P.]...3320

Penal Code (45 of 1860), Sections 302, 304 Part II - *Murder or culpable homicide not amounting to murder - Appellant convicted u/s 304 Part II of I.P.C. - Held - In the light of medical evidence, it cannot be accepted that the injuries were not sufficient to cause death - On the contrary, it is found that the ocular evidence adduced by prosecution has been medically corroborated - Since the deceased was having 19 injuries, therefore, it can be said that she was beaten severely.* [Dhapu Bai v. State of M.P.] ...3316

Penal Code (45 of 1860), Sections 302 & 304 Part II - *Murder or culpable homicide not amounting to murder - Appellants went to house of deceased and admonished him for his making false allegation against acquitted accused of theft of buffalos - This led to hot altercation and appellants gave Lathi blow on head and sholder of deceased - Held - Only one injury found on head of deceased - Difficult to hold that who caused injury on head as witnesses have stated that both appellants each had dealt one Lathi blow on head - None of the Doctors have stated that injury was sufficient to cause death - It can be held that appellant No.2 and 3 knew that by their acts they were likely to cause his death - Convicted u/s 304 Part II - Sentenced to undergo 5 years R.I. - Appeal partly allowed.* [Bhaiyalal v. State of M.P.] ...3309

Penal Code, (45 of 1860), Section 304B - See - *Criminal Procedure Code, 1973, Section 378(3)* [State of M.P. v. Rajesh] ...2670

दण्ड संहिता (1860 का 45), धारा 302, 304 भाग I – हत्या या हत्या की कोटि में न आने वाला सदोष मानव वध – मृतक अपने पति के साथ बैठी थी – सुन्दरलाल अपने पुत्र रामसा (अपीलार्थी), पिंटू और रामदास के साथ वहाँ आया – सुन्दरलाल ने जोर से गालियाँ दीं और उन सभी ने मृतक पर कुल्हाड़ी से हमला किया – अपीलार्थी रामसा को भा.द.सं. की धारा 302 के अन्तर्गत दोषसिद्ध किया गया जबकि अन्य अभियुक्तों को दोषमुक्त किया गया – अभिनिर्धारित – कोई साक्ष्य नही कि अभियुक्त और परिवादी पक्ष में बैरपूर्ण संबंध थे – घटना क्षणभर में घटित – अपीलार्थी का कृत्य धारा 300 के अपवाद 4 के अन्तर्गत आता है – अपीलार्थी धारा 302 के अन्तर्गत दोषमुक्त और धारा 304 भाग I के अन्तर्गत दोषसिद्ध – 8 वर्ष के सश्रम कारावास का दण्डादेश दिया – अपील अंशतः मंजूर। (रामसा वि. म.प्र. राज्य) ...2662

दण्ड संहिता (1860 का 45), धाराएँ 302, 304 भाग II – हत्या या हत्या की कोटि में न आने वाला सदोष मानव वध – अभियुक्त ने अपने भाई के सिर पर 'खरलिया' जैसे भारी लट्ठे से गम्भीर क्षतियाँ कारित कीं – प्रत्यक्षदर्शी साक्षी ने अभियुक्त को मृतक के सिर, ठोढ़ी और छाती पर प्रहार करते देखा – एफ.आई.आर. पिता द्वारा दर्ज कराई गई – प्रत्यक्षदर्शी साक्षी द्वारा दिये घटना के वृत्तांत की अन्य साक्षियों द्वारा पुष्टि की गई – अभिनिर्धारित – अभियुक्त ने कई क्षतियाँ शरीर के मर्मस्थल अर्थात् सिर पर कारित कीं – कारित क्षतियों से यह स्पष्ट रूप से दर्शित होता है कि अपीलार्थी का आशय मृतक की हत्या कारित करना था – अपीलार्थी का कृत्य धारा 302 के अन्तर्गत आता है – दोषसिद्धि और दण्डादेश पुष्ट – अपील खारिज। (नासा वि. म.प्र. राज्य) ...3320

दण्ड संहिता (1860 का 45), धाराएँ 302, 304 भाग II – हत्या या हत्या की कोटि में न आने वाला सदोष मानव वध – अपीलार्थी को भा.द.सं. की धारा 304 भाग II के अन्तर्गत दोषसिद्ध किया गया – अभिनिर्धारित – चिकित्सीय साक्ष्य के प्रकाश में यह स्वीकार नही किया जा सकता कि क्षतियाँ मृत्यु कारित करने के लिए पर्याप्त नही थीं – इसके विपरीत यह पाया गया कि अभियोजन द्वारा पेश प्रत्यक्ष साक्ष्य की चिकित्सीय साक्ष्य से सम्पुष्टि हुई – चूंकि मृतक को 19 क्षतियाँ आयीं, इसलिए, यह कहा जा सकता है कि उसे निर्दयता पूर्वक पीटा गया। (धामूबाई वि. म.प्र. राज्य) ...3316

दण्ड संहिता (1860 का 45), धारा 302 व 304 भाग II – हत्या या हत्या की कोटि में न आने वाला सदोष मानव वध – अपीलार्थी मृतक के घर गये और दोषमुक्त अभियुक्त के विरुद्ध भैंसों की चोरी का मिथ्या आरोप लगाने के लिए उसकी भर्त्सना की – इससे उग्र झगड़ा हुआ और अपीलार्थियों ने मृतक के सिर और कंधों पर लाठी का प्रहार किया – अभिनिर्धारित – मृतक के सिर पर केवल एक क्षति पायी गई – यह अभिनिर्धारित करना कठिन है कि सिर पर किसने क्षति कारित की क्योंकि साक्षियों ने कथन किया है कि दोनों अपीलार्थियों में से प्रत्येक ने सिर पर एक लाठी का प्रहार किया था – किसी भी चिकित्सक ने यह कथन नही किया कि क्षति मृत्यु कारित करने के लिए पर्याप्त थी – यह अभिनिर्धारित किया जा सकता है कि अपीलार्थी क्रमांक 2 व 3 जानते थे कि उनके कृत्य से मृत्यु कारित होना संभाव्य थी – धारा 304 भाग II के अन्तर्गत दोषसिद्धि – 5 वर्ष के सश्रम कारावास का दण्डादेश दिया – अपील अंशतः मंजूर। (भैयालाल वि. म.प्र. राज्य) ...3309

दण्ड संहिता, (1860 का 45), धारा 304बी – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 378(3), (म.प्र. राज्य वि. राजेश) ...2670

Penal Code (45 of 1860), Section 304 Part II r/w Section 149 - ***Culpable homicide not amounting to murder*** - *Injuries were simple in nature - No injury on vital part of deceased - Deceaced died after 4 days of incident - Autopsy was conducted twice by Medical Board - No definite opinion of doctors that death was due to sustained injuries - In post-mortem, it was found that the deceased was suffering from advance tuberculosis, bleeding from lungs resulting in failure of heart and respiratory system - FSL report was not produced - Held - It cannot be presumed that the simple injuries inflicted on non-vital parts with knowledge that it is likely to cause death or to cause such bodily injury as is likely to cause death in normal course of nature - Offence u/s 304 Part II not made out.* [Ramhet v. State of M.P.] ...3339

Penal Code (45 of 1860), Section 306 - ***Abetment to commit suicide*** - *Applicant had threatened the deceased that he will involve him in some case under Atrocities Act and he will not sit in rest until the deceased would be sent to jail - Held - Deceased committed suicide out of sheer annoyance and frustration - Applicant cannot be blamed for the same - No material to make the case of abetment on part of applicant - Order framing charge u/s 306 set-aside - Revision allowed.* [Sita @ Sita Pratap Vaishya v. State of M.P.]...*74

Penal Code (45 of 1860), Section 306 - ***Abatement to commit suicide*** - *Applicant No.1 grabbed money of deceased - Deceased was assaulted by applicants when he demanded his money back - Held - No material to show that applicants in any manner instigated, incited or provoked deceased to commit suicide - Nothing to indicate any intention on their part that deceased should commit suicide - Order framing charge u/s 306 set-aside - Revision allowed.* [Babbi @ Jitendra v. State of M.P.] ...3042

Penal Code (45 of 1860), Section 306 - ***Abetment to commit suicide*** - *Prosecution has to establish prima facie case in the first instance, yet it is not of the law of the country that the prosecution has to eliminate all possible evidences and circumstances which may exonerate accused - If those facts are within the knowledge of accused then he has to prove them - Non-explanation of circumstances during the period intervening appellant's return from Bhopal and ultimately death of his wife was the strongest possible circumstance to discredit the defence version.* [Prahlad Tanwani v. State of M.P.] ...3284

Penal Code (45 of 1860), Section 306 - ***Abetment to commit suicide*** - *There is no material on record to suggest that deceased was hypersensitive to ordinary petulance - On the contrary, tenure of the letters written by her was sufficient to indicate her maturity in understanding the complexity of an unhappy domestic life - Appellant was rightly held guilty of abetting commission of suicide by his wife.* [Prahlad Tanwani v. State of M.P.] ...3284

Penal Code (45 of 1860), Section 306 - ***Nature of death*** - *Suicidal or*

दण्ड संहिता (1860 का 45), धारा 304 भाग II सहपठित धारा 149 – हत्या की कोटि में न आने वाला सदोष मानव वध – क्षतियाँ साधारण प्रकृति की थीं – मृतक के मर्मस्थल पर कोई क्षति नही – मृतक की घटना के 4 दिन बाद मृत्यु हुई – मेडीकल बोर्ड द्वारा शव–परीक्षा दो बार की गयी – चिकित्सकों की कोई निश्चित राय नही कि मृत्यु आयी क्षतियों के कारण हुई – शव–परीक्षण में यह पाया गया कि मृतक गंभीर क्षय रोग से पीड़ित था, फेंफड़ों से रक्त स्राव के परिणामस्वरूप हृदय और श्वसन–तंत्र विफल हुआ – एफ.एस.एल. रिपोर्ट पेश नही की गई – अभिनिर्धारित – यह उपधारणा नही की जा सकती कि साधारण क्षतियाँ गैर मर्मस्थलों पर इस ज्ञान के साथ पहुँचाई गईं कि इससे मृत्यु कारित करना या ऐसी शारीरिक क्षति कारित करना संभाव्य है जिससे प्रकृति के सामान्य अनुक्रम में मृत्यु कारित होना संभाव्य है – धारा 304 भाग II के अन्तर्गत अपराध नही बनता। (रामहेत वि. म.प्र. राज्य) ...3339

दण्ड संहिता (1860 का 45), धारा 306 – आत्महत्या का दुष्प्रेरण – आवेदक ने मृतक को धमकी दी थी कि वह उसे अत्याचार अधिनियम के अधीन किसी मामले में फँसा देगा और जब तक मृतक को जेल नहीं भेज देता वह आराम से नहीं बैठेगा – अभिनिर्धारित – मृतक ने मात्र क्षोभ और निराशा से आत्महत्या की – आवेदक को इसके लिए दोष नहीं दिया जा सकता – आवेदक द्वारा दुष्प्रेरण करने का मामला बनाने के लिए कोई सामग्री नहीं – धारा 306 के अधीन आरोप विरचित करने का आदेश अपास्त – पुनरीक्षण मंजूर। (सीता उर्फ सीता प्रताप वैश्य वि. म.प्र. राज्य)...*74

दण्ड संहिता (1860 का 45), धारा 306 – आत्महत्या का दुष्प्रेरण – आवेदक क्र. 1 ने मृतक की धनराशि छीनी – जब मृतक ने अपनी धनराशि वापस माँगी तो आवेदकों द्वारा उस पर हमला किया गया – अभिनिर्धारित – यह दर्शाने के लिए कोई सामग्री नही कि आवेदकों ने मृतक को आत्महत्या करनें के लिए किसी तरीके से उकसाया, उद्दीप्त या प्रकोपित किया – उनकी ओर से किसी आशय को उपदर्शित करने के लिए कुछ नही कि मृतक को आत्महत्या करनी चाहिए – धारा 306 के अन्तर्गत आरोप विरचित करने का आदेश अपास्त – पुनरीक्षण मंजूर। (बब्बी उर्फ जितेन्द्र वि. म.प्र. राज्य) ...3042

दण्ड संहिता (1860 का 45), धारा 306 – आत्महत्या करने का दुष्प्रेरण – अभियोजन को प्रथम अवसर पर प्रथम दृष्ट्या मामला स्थापित करना होता है, इसके अलावा यह देश की विधि नही है कि अभियोजन को सभी संभव साक्ष्य और परिस्थितियों को हटा देना चाहिए जो अभियुक्त को दोषमुक्त कर सकती हैं – यदि वे तथ्य अभियुक्त की जानकारी में हैं तब उसे उन्हें साबित करना होता है – अपीलार्थी के भोपाल से लौटने के बाद से और अंततः उसकी पत्नी की मृत्यु होने के मध्य की कालावधि के दौरान की परिस्थितियों को स्पष्ट न करना प्रतिरक्षा के कथन पर अविश्वास करने के लिए प्रबल संभाव्य परिस्थिति थी। (प्रहलाद तनवानी वि. म.प्र. राज्य) ...3284

दण्ड संहिता (1860 का 45), धारा 306 – आत्महत्या करने का दुष्प्रेरण – यह सुझाव देने के लिए अभिलेख पर कोई साक्ष्य नही कि मृतक साधारण चिड़चिड़ेपन के प्रति अतिसंवेदनशील थी – इसके विपरीत, उसके द्वारा लिखे गये पत्रों की अवधि दुखी घरेलू जीवन की मनोवृत्ति को समझने में उसकी परिपक्वता इंगित करने के लिए पर्याप्त थी – अपीलार्थी को उसकी पत्नी को आत्महत्या के लिए दुष्प्रेरित करने का उचित रूप से दोषी ठहराया गया। (प्रहलाद तनवानी वि. म.प्र. राज्य) ...3284

दण्ड संहिता (1860 का 45), धारा 306 – मृत्यु की प्रकृति – आत्मघाती या

incidental - There is no evidence to suggest that at any point of time, preceding her death, deceased had raised alarm or attempted to save herself while burning - Plastic cane, stove, lantern, match box, match stick and burned clotheing found at the spot - Dead body found lying in kitchen near oven - Kitchen was found closed from inside - No dispute either in the cross-examination or examination u/s 313 of Cr.P.C. was raised as to circumstances prevailing on the spot - Availability of carbon particles in the trachea was indicative of the fact that the burn injuries were ante-mortem in nature - In the light of these facts & circumstances coupled with the opinion of medical as well as forensic experts, it was proved beyond reasonable doubt that the nature of death was neither homicidal nor incidental but was suicidal in nature. [Prahlad Tanwani v. State of M.P.] ...3284

Penal Code (45 of 1860), Section 306 - See - *Evidence Act, 1872, Section 32(1),* [Prahlad Tanwani v. State of M.P.] ...3284

Penal Code (45 of 1960), Sections 306 & 107 - *Abetment to commit suicide* - *Abetment of suicide u/s 306 involves a mental process of instigating a person or intentionally aiding that person in doing of a thing - More active role which can be described as instigating or aiding doing of a thing is thus required before a person can be said to be abetting suicide - Cruel or insulting behaviour cannot be taken an act of abetting suicide - Ingredients of Section 306 IPC not established - Conviction of accused found to be improper.* [Radha (Smt.) v. State of M.P.] ...3333

Penal Code (45 of 1860), Section 307 - *Attempt to murder* - *Due to quarrel before eight days, appellant caused serious injuries on abdomen and head of victim by knife - Statement of eye witnesses corroborated by medical evidence - The defence story that victim and witnesses abused and assaulted appellant - Held - In absence of any report lodged by the appellant or defence witnesses and medical report of injuries sustained by appellant, defence story would not be accepted - Doctor has specifically opined that the injuries were sufficient in the ordinary course of nature to cause death - Sufficient circumstances to establish that appellant caused injuries to victim with the intention of murder - Appellant committed the offence of attempt to murder punishable u/s 307 IPC - Appeal dismissed.* [Arshad @ Arsad v. State of M.P.] ...3278

Penal Code, (45 of 1860), Section 307 - See - *Evidence Act, 1872, Section 9* [Nathu v. State of M.P.] ...2682

Penal Code, (45 of 1860), Section 326 - See - *Evidence Act 1872, Section 3* [Ashok v. State of M.P.] ...*71

Penal Code (45 of 1860), Sections 363, 366, 376 - *Kidnapping and Rape* - *Determination of age - Parents and prosecutrix stating that she is*

दुर्घटनावश – ऐसा कोई साक्ष्य नही है जो यह सुझाता हो कि मृतक ने मृत्यु के पूर्व, जब वह जल रही थी, संकट सूचना दी हो या स्वयं को बचाने के लिए कोई प्रयत्न किया हो – प्लास्टिक केन, स्टोव, लालटेन, माचिस, माचिस की तीलियाँ और जले हुए कपड़े घटना स्थल पर पाये गये – शव किचिन में चूल्हे के पास पड़ा पाया – किचिन अंदर से बंद था – घटना स्थल पर जो परिस्थितियाँ थी उसके सम्बन्ध में प्रतिपरीक्षण में या द.प्र.सं. की धारा 313 की परीक्षा में कोई विवाद नही उठाया – श्वासनली (trachea) में कार्बन के कणों की उपलब्धता यह इंगित करती है कि जलने की क्षतियाँ मृत्यु पूर्व की प्रकृति की थीं – इन तथ्यों और परिस्थितियों के आलोक में चिकित्सीय और न्यायालयीन विशेषज्ञों की राय से शंका से परे यह सिद्ध है कि मृत्यु की प्रकृति न तो मानव वध थी और न ही दुर्घटनावश बल्कि आत्मघाती प्रकृति की थी। (प्रहलाद तनवानी वि. म.प्र. राज्य) ...3284

दण्ड संहिता, (1860 का 45), धारा 306 – देखें – साक्ष्य अधिनियम, 1872, धारा 32(1), (प्रहलाद तनवानी वि. म.प्र. राज्य) ...3284

दण्ड संहिता (1960 का 45), धाराएँ 306 व 107 – आत्महत्या करने का दुष्प्रेरण – धारा 306 के अन्तर्गत आत्महत्या के दुष्प्रेरण में, किसी व्यक्ति को उकसाने की मानसिक प्रक्रिया या उस व्यक्ति को कोई कार्य करने में साशय सहायता देना, अन्तर्ग्रस्त है – इस प्रकार किसी व्यक्ति को आत्महत्या के लिए दुष्प्रेरित करना कह सकने के लिए, अधिक सक्रिय भूमिका जो कोई कार्य करने के लिए उकसाना या सहायता देने के रूप में वर्णित की जा सकती है, आवश्यक है – क्रूर या अपमानजनक व्यवहार को आत्महत्या के लिए प्रेरित करने वाला कार्य नही माना जा सकता – भा.द.सं. की धारा 306 के घटक स्थापित नही हुए – अभियुक्त की दोषसिद्धि अनुचित पायी। (राधा (श्रीमति) वि. म.प्र. राज्य) ...3333

दण्ड संहिता (1860 का 45), धारा 307 – हत्या का प्रयास – आठ दिन पूर्व के झगड़े के कारण अपीलार्थी ने पीड़ित के पेट और सिर में चाकू से गम्भीर क्षतियाँ कारित कीं – प्रत्यक्षदर्शी साक्षियों के कथन चिकित्सीय साक्ष्य से पुष्ट हुए – प्रतिरक्षा कहानी, कि पीड़ित और साक्षियों ने अपीलार्थी को गालियाँ दीं और हमला किया – अभिनिर्धारित – अपीलार्थी या प्रतिरक्षा साक्षियों द्वारा दर्ज किसी रिपोर्ट और अपीलार्थी को आयी क्षतियों की चिकित्सीय रिपोर्ट के अभाव में प्रतिरक्षा कहानी स्वीकार नही कीं जायेगी – चिकित्सक ने विशिष्ट रूप से राय दी कि क्षतियाँ प्रकृति के सामान्य अनुक्रम में मृत्यु कारित करने के लिए पर्याप्त थीं – यह स्थापित करने के लिए पर्याप्त परिस्थितियाँ कि अपीलार्थी ने हत्या करने के आशय से पीड़ित को क्षतियाँ कारित कीं – अपीलार्थी ने भा.द.सं. की धारा 307 के अधीन दण्डनीय, हत्या के प्रयास का अपराध किया – अपील खारिज। (अरशद उर्फ अरसद वि. म.प्र. राज्य) ...3278

दण्ड संहिता, (1860 का 45), धारा 307 – देखें – साक्ष्य अधिनियम 1872, धारा 9 (नाथू वि. म.प्र. राज्य) ...2682

दण्ड संहिता, (1860 का 45), धारा 326 – देखें – साक्ष्य अधिनियम 1872, धारा 3 (अशोक वि. म.प्र. राज्य) ---*71

दण्ड संहिता, (1860 का 45), धाराएँ 363, 366, 376 – व्यपहरण और बलात्संग – आयु का अवधारण – अभिभावक और अभियोक्त्री ने कथन किया कि उसकी उम्र 16 वर्ष से कम

below 16 years of age - Date of birth recorded in school register on the information of father shows that prosecutrix was below 16 years of age - Held - Evidence of parents and school register proves that prosecutrix was 15 years and 8 months old on the date of incident. [Mohammad Aslam v. State of M.P.] ...2708

Penal Code (45 of 1860), Sections 363, 366, 376 - *Kidnapping and Rape* - *Prosecutrix who was washing cloths was dragged by appellant and thereafter taken to Sarni by cycle and truck - Prosecutrix was shifted in a rented house - Appellant committed sexual intercourse daily with her - Prosecutrix recovered from possession of appellant on the report of father of prosecutrix - Held - Consent of prosecutrix is immaterial as she is below 16 years of age - Violation, intention and conduct of women do not determine the offence - They only foretell upon the intent with which accused had kidnapped her - Appellant by active persuasion enticed prosecutrix below 16 years of age to come from one place to another with intent to have sex illegitimately - Appellant rightly convicted by trial court - Appeal dismissed.* [Mohammad Aslam v. State of M.P.] ...2708

Penal Code (45 of 1860), Sections 366, 376 - *On 10.04.1990 prosecutrix while returning home was caught and was confined in house - In the night she was ravished by appellant Chatra - Next day brother of prosecutrix alongwith two witnesses reached there - Prosecutrix and appellant Chatra were taken to village - FIR was lodged on 12.04.1990 - Appellant Chatra was arrested on 19.04.1990 - Held - Medical report of appellant Chatra dated 12.04.1990, in which 7 injuries were found, suppressed by prosecution - Manipulation found in appellant's medical report dated 19.04.1990 - No explanation why appellant was not arrested on 12.04.1990 - Material witnesses were deliberately withheld by prosecution - Deficiencies and serious infirmities in prosecution case - Defence story probable that appellant was assaulted on account of dispute over repayment of the amount, and when he lodged the report, a false case has been concocted or prosecutrix was a consenting party found in the company of appellant and both were beaten by brother and relative of prosecutrix - Thereafter, she was forced to lodge the report - Conviction & sentence set-aside - Appeal allowed.* [Chatra v. State of M.P.] ...2674

Penal Code (45 of 1860), Section 376, Evidence Act, 1872, Section 3 - *Appreciation of evidence* - *Prosecutrix, who had lodged the F.I.R., was not examined as she could not be traced - Appellant convicted on the basis of hearsay evidence - Held - In absence of the evidence of prosecutrix, who was an adult married women, the mere hearsay statement of witness that the husband was complaining of rape with his wife by the appellant, was not sufficient to establish that appellant committed rape with her.* [Suresh v. State of M.P.]...3324

है – पिता द्वारा दी गई जानकारी पर स्कूल रजिस्टर में अभिलिखित जन्मतिथि दर्शाती है कि अभियोक्त्री की उम्र 16 वर्ष से कम थी – अभिनिर्धारित – अभिभावक की साक्ष्य और स्कूल रजिस्टर साबित करते हैं कि घटना की तारीख पर अभियोत्री 15 वर्ष 8 माह की थी। (मोहम्मद असलम वि. म.प्र. राज्य)
...2708

दण्ड संहिता (1860 का 45), धाराएँ 363, 366, 376 – व्यपहरण और बलात्संग – अपीलार्थी द्वारा अभियोक्त्री जो कपड़े धो रही थी, को घसीटा गया और उसके बाद साईकिल और ट्रक द्वारा सारनी ले जाया गया – अभियोक्त्री को एक किराये के मकान में रखा – अपीलार्थी ने उसके साथ प्रतिदिन मैथुन किया – अभियोक्त्री के पिता की रिपोर्ट पर अभियोक्त्री अपीलार्थी के कब्जे से बरामद की गई – अभिनिर्धारित – अभियोक्त्री की सहमति तात्विक नही है क्योंकि उसकी उम्र 16 वर्ष से कम है – उल्लंघन, आशय और महिला का आचरण अपराध अवधारित नहीं करते हैं – वे केवल बताते हैं कि अभियुक्त ने किस आशय से उसका व्यपहरण किया – अपीलार्थी ने 16 वर्ष से कम उम्र की अभियोक्त्री से अवैध रूप से शारीरिक संबंध बनाने के आशय से उसे सक्रिय अनुनय द्वारा एक स्थान से दूसरे स्थान पर जाने के लिए फुसलाया – अपीलार्थी को विचारण न्यायालय द्वारा उचित रूप से दोषसिद्ध किया गया – अपील खारिज। (मोहम्मद असलम वि. म.प्र. राज्य)...2708

दण्ड संहिता (1860 का 45), धाराएँ 366, 376 – 10.04.1990 को अभियोक्त्री जब घर लौट रही थी, उसे पकड़ा और घर में परिरुद्ध रखा – रात में अपीलार्थी चतरा द्वारा उसके साथ बलात्कार किया गया – अगले दिन अभियोक्त्री का भाई दो साक्षियों के साथ वहाँ पहुँचा – अभियोक्त्री और अपीलार्थी चतरा को गाँव ले जाया गया – एफ.आई.आर. 12.04.1990 को दर्ज कराई गई – अपीलार्थी चतरा को 19.04.1990 को गिरतार किया गया – अभिनिर्धारित – अपीलार्थी चतरा की मेडीकल रिपोर्ट तारीख 12.04.1990, जिसमें 7 क्षतियाँ पाई गई, अभियोजन द्वारा दबाई गई – अपीलार्थी की तारीख 19.04.1990 की मेडीकल रिपोर्ट में हेरफेर पाया गया – कोई स्पष्टीकरण नही कि 12.04.1990 को अपीलार्थी को क्यों गिरतार नही किया – अभियोजन द्वारा सारवान साक्षियों का जानबूझकर परीक्षण नही कराया – अभियोजन के मामले में कमियाँ और गम्भीर दुर्बलता – प्रतिरक्षा की कथा संभाव्य कि राशि के पुर्नभुगतान पर से विवाद के कारण अपीलार्थी पर हमला किया, और जब उसने रिपोर्ट दर्ज करायी, एक मिथ्या मामला गढ़ा गया या अभियोक्त्री एक सहमत पक्षकार थी अपीलार्थी के साथ पायी गई और दोनों को अभियोक्त्री के भाई और रिश्तेदार द्वारा पीटा गया – तत्पश्चात् उस पर रिपोर्ट दर्ज कराने के लिए दवाब डाला गया – दोषसिद्धि और दण्डादेश अपास्त – अपील मंजूर। (चतरा वि. म.प्र. राज्य)
...2674

दण्ड संहिता (1860 का 45), धारा 376, साक्ष्य अधिनियम, 1872, धारा 3 – साक्ष्य का अधिमूल्यन – अभियोक्त्री, जिसने एफ.आई.आर. दर्ज कराई, का परीक्षण नही किया गया क्योंकि उसका पता नही लगाया जा सका – अपीलार्थी को अनुश्रुत साक्ष्य के आधार पर दोषसिद्ध किया गया – अभिनिर्धारित – अभियोक्त्री, जो कि एक वयस्क विवाहित महिला थी, की साक्ष्य के अभाव में, साक्षी का केवल अनुश्रुत कथन कि पति ने उसकी पत्नी के साथ अपीलार्थी द्वारा बलात्कार करने की शिकायत की, यह स्थापित करने के लिये पर्याप्त नही था कि अपीलार्थी ने उसके साथ बलात्संग किया। (सुरेश वि. म.प्र. राज्य)
...3324

Penal Code (45 of 1860), Section 376, Evidence Act, 1872, Section 3 - *Rape - "Mere Sath Usne Galat Kam Kiya" - In dying declaration prosecutrix disclosed that when she went to answer call of nature, appellant caught hold of her from behind and swathe her mouth and then "Mere Sath Usne Galat Kam Kiya" - Held - If the words used by prosecutrix are considered coupled with other circumstances, it becomes clear that prosecutrix wanted to say that accused ravished her.* [Annu @ Anoop Kumar v. State of M.P.] ...2435

Penal Code (45 of 1860), Section 376 - ***Rape*** - *Appellant committed rape with girl of 13 years who became disgusted and committed suicide - Dying declarations made by prosecutrix found reliable - Appellant guilty of committing rape -- Offence of appellant in these circumstances becomes more heinous - Trial Court awarded rigorous imprisonment of 10 years - No adequate or special reason for reducing the jail sentence - Appeal dismissed.* [Annu @ Anoop Kumar v. State of M.P.] ...2435

Penal Code (45 of 1860), Section 376 - ***Rape - Consent and Submission - Difference*** - *There is a difference between consent and submission - Every consent involves a submission, but the converse does not follow, and a mere act of submission does not involve consent - Consent of woman in order to relieve an act of a criminal character like rape, must be an act of reason, accompanied with deliberation, after the mind has weighed as in a balance, the good and evil on each side, with existing capacity and power to withdraw the assent according to one's will or pleasure - Therefore, a woman is said to consent only when she freely agrees to submit herself, while in free and unconstrained possession of physical and moral power to act in a manner she wanted.* [Kaptan Singh v. State of M.P.] ...2715

Penal Code (45 of 1860), Section 376 - ***Rape*** - *Prosecutrix below 16 years of age - Appellant took her knowingly that she will be seduced to illicit intercourse and committed sexual intercourse though with her consent - Act of appellant comes within purview of Section 375(Sixthly) - Appellant rightly convicted - Appeal dismissed.* [Vinod Kumar v. State of M.P.] ...3327

Penal Code, (45 of 1860), Section 376 - See - *Criminal Procedure Code, 1973, Section 154,* [Suresh v. State of M.P.] ...3324

Penal Code (45 of 1860), Section 376(2)(f) - *Appellant alleged to have committed offence of rape on a minor girl aged 8 years - Prosecutrix and her mother supporting prosecution case in their examination-in-chief - Their statements are corroborated by medical evidence & F.I.R. - Trial court convicted appellant u/s 376(2)(f) of IPC - Conviction & sentence challenged - Held - Prosecutrix and her mother took somersault in cross-examination and contradicted their statements of examination-in-chief with the explanation that on insistence of police they stated against the appellant in examination-in-chief - Father and brother of prosecutrix turned hostile - Appellant was in*

दण्ड संहिता (1860 का 45), धारा 376, साक्ष्य अधिनियम, 1872, धारा 3 – बलात्संग – "मेरे साथ उसने गलत काम किया" – मृत्युकालिक कथन में अभियोक्त्री ने बताया कि जब वह शौच के लिए गई, अपीलार्थी ने उसे पीछे से पकड़ लिया और उसके मुह पर पट्टी लपेट दी और तब "मेरे साथ उसने गलत काम किया" – अभिनिर्धारित – यदि अभियोक्त्री द्वारा प्रयुक्त शब्दों को अन्य परिस्थितियों के साथ विचार में लिया जाता है, यह स्पष्ट हो जाता है कि अभियोक्त्री कहना चाहती थी कि अभियुक्त ने उसके साथ बलात्संग किया। (अन्नू उर्फ अनूप कुमार वि. म.प्र. राज्य) ...2435

दण्ड संहिता (1860 का 45), धारा 376 – बलात्संग – अपीलार्थी ने 13 वर्ष की बालिका के साथ बलात्संग किया जिससे उसे ग्लानि हो गई और उसने आत्महत्या कर ली – अभियोक्त्री द्वारा किये गये मृत्युकालिक कथन विश्वसनीय पाये – अपीलार्थी बलात्संग करने का दोषी – इन परिस्थितियों में अपीलार्थी का अपराध अधिक जघन्य हो जाता है – विचारण न्यायालय ने 10 वर्ष का कठोर कारावास दिया – कारावास के दण्डादेश को कम करने के लिए कोई पर्याप्त या विशिष्ट कारण नहीं – अपील खारिज। (अन्नू उर्फ अनूप कुमार वि. म.प्र. राज्य) ...2435

दण्ड संहिता (1860 का 45), धारा 376 – बलात्संग – सम्मति और समर्पण – अन्तर – सम्मति और समर्पण में अंतर है – प्रत्येक सम्मति में समर्पण अन्तर्वलित होता है, किन्तु इसका उल्टा अनुसरित नहीं किया जाता, और समर्पण के कृत्य मात्र में सम्मति अन्तर्वलित नही है – किसी महिला की सम्मति, बलात्संग जैसे दाण्डिक प्र.ति के कृत्य से मुक्त करने के लिए, सकारण, सोच–विचार के साथ मस्तिष्क में अच्छा–बुरा तौलने के बाद उसकी इच्छा या मर्जी के अनुसार सम्मति को वापस लेने की विद्यमान सामर्थ्य और शक्ति के साथ होना चाहिए – एक महिला ने सम्मति दी ऐसा केवल तभी कहा जाएगा जब वह स्वतंत्र रूप से स्वयं को समर्पित करती हो और वह शारीरिक और नैतिक शक्ति के कृत्य को जिस तरीके से करना चाहती हो उसके लिए स्वतंत्र हो। (कप्तान सिंह वि. म.प्र. राज्य) ...2715

दण्ड संहिता (1860 का 45), धारा 376 – बलात्संग – अभियोक्त्री की उम्र 16 वर्ष से कम – अपीलार्थी यद्यपि उसकी सहमति के साथ उसे यह जानते हुए ले गया कि उसे अयुक्त संभोग करने के लिए विलुब्ध करेगा और मैथुन कारित करेगा – अपीलार्थी का कृत्य धारा 375(छटवाँ) के क्षेत्र में आता है – अपीलार्थी उचित रूप से दोषसिद्ध – अपील खारिज। (विनोद कुमार वि. म.प्र. राज्य) ...3327

दण्ड संहिता, (1860 का 45), धारा 376, – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 154, (सुरेश वि. म.प्र. राज्य) ...3324

दण्ड संहिता (1860 का 45), धारा 376(2)(एफ) – अपीलार्थी ने कथित रूप से 8 वर्ष की अवयस्क बालिका के साथ बलात्संग का अपराध किया – अभियोक्त्री और उसकी माँ ने उनके मुख्य परीक्षण में अभियोजन के मामले का समर्थन किया – उनके कथनों की चिकित्सकीय साक्ष्य और एफ.आई.आर. से पुष्टि हुई – विचारण न्यायालय ने अपीलार्थी को भा.द.सं. की धारा 376(2)(एफ) के अन्तर्गत दोषसिद्ध किया – दोषसिद्धि और दण्डादेश को चुनौती दी गई – अभिनिर्धारित – अभियोक्त्री और उसकी माँ ने प्रतिपरीक्षण में बयान पलट दिये और उनके मुख्य परीक्षण में दिये बयान के सम्बन्ध में स्पष्टीकरण दिया कि मुख्य परीक्षा में पुलिस के आग्रह पर अपीलार्थी के विरुद्ध बयान दिया था – अभियोक्त्री के पिता और भाई पक्षद्रोही हो गये – अपीलार्थी घटना तारीख के पहले ही पुलिस की

police custody previous to the date of incident - Factum of non-sustaining injury on genetile organ of appellant also weakens prosecution case - Evidence of prosecutrix and her mother cannot be relied beyond doubt - Conviction and sentence not tenable - Appellant acquitted. [Chhota @ Chhotelal v. State of M.P.] ...3019

Penal Code (45 of 1860), Section 376(2)(f) - *Punishment for committing rape on a woman when she is under twelve years of age - Appellant sentenced to 10 year rigorous imprisonment and a fine of Rs.5000/- with default stipulation for committing rape on a minor girl of eight years of age - In appeal prayed for leniency in awarding the sentence - Held - The aims of punishment are now considered to be retribution, justice, deterrence, reformation and protection and modern policy reflects a combination of several or all of these aims - No 'adequate and special reasons' appears to reduce the sentence - Rape is a heinous crime and against the society and a deterrent punishment is required to weed it out - Appeal dismissed.* [Suneel v. State of M.P.] ...2406

Penal Code (45 of 1860), Sections 395 & 397 - See - *Evidence Act, 1872, Section 9* [Mahendra Singh v. State of M.P.] ...2989

Penal Code, (45 of 1860), Section 420 - See - *Criminal Procedure Code, 1973, Sections 397, 401* [Pramod v. State of M.P.] ...2466

Penal Code (45 of 1860), Sections 467 & 468 - *Forgery - Applicant dishonestly obtained money from complainants and issued cheques to them which were not encashed - No allegation that cheques were false or fabricated - It cannot be said that cheques were forged with intent to defraud complainants - Conviction of applicant for offence u/s 467 & 468 set-aside - Revision partly allowed.* [Anil Kumar Gupta v. State of M.P.] ...2453

Penal Code (45 of 1860), Section 498-A - *Cruelty - Penal provision of Sec. 498-A inserted by way of Criminal Law (Second Amendment) Act, 1983 w.e.f. 25.12.1983 - The instances prior to introduction of Sec. 498-A cannot be taken into account for ascertaining the corresponding liability.* [Prahlad Tanwani v. State of M.P.] ...3284

Penal Code (45 of 1860), Sections 498-A, 306 - See - *Evidence Act, 1872, Section 8,* [Prahlad Tanwani v. State of M.P.] ...3284

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), Sections 32, 33 - *Reservation to persons with disability made available to orthopaedically handicapped but no solace offered to blind, deaf and dumb - Bureaucratic system failed to implement legislation - Government is duty bound to identify the posts in establishment to which reservation must be made to blind, deaf, dumb and cerebral palsy - By issuing notification, subject to condition, any establishment may be exempted from purview of reservation - No such*

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अभिरक्षा में था – अपीलार्थी के प्रजनन अंग पर कोई क्षति न होने के तथ्य से अभियोजन का मामला कमजोर हुआ – अभियोक्त्री और उसकी माता के साक्ष्य को शंका से परे विश्वसनीय नही माना जा सकता – दोषसिद्धि और दण्डादेश स्थिर रखने योग्य नही – अपीलार्थी दोषमुक्त किया गया। (छोटा उर्फ छोटे लाल वि. म.प्र. राज्य) ...3019

दण्ड संहिता (1860 का 45), धारा 376(2)(एफ) – किसी स्त्री से जो बारह वर्ष से कम आयु की है, बलात्संग करने के लिए दण्ड – अपीलार्थी आठ वर्ष की अवयस्क बालिका से बलात्संग करने के लिऐ दस वर्ष के संश्रम कारावास और व्यतिक्रम अनुबंध के साथ 5000/– रुपये के जुर्माने से दण्डादिष्ट – अपील में दण्डादेश देने में नरमी के लिए प्रार्थना की गई – अभिनिर्धारित – अब दण्ड के उद्देश्य प्रतिकार, न्याय, निवारण, सुधार और संरक्षण विचारित किये जाते हैं और आधुनिक नीति इन उद्देश्यों के कई या सभी के संयोजन को प्रतिबिम्बित करती है – दण्डादेश को कम करने के लिए कोई 'पर्याप्त और विशेष कारण' प्रकट नहीं होते – बलात्संग एक जघन्य और समाज के विरुद्ध अपराध है और उसे बाहर उखाड़ने के लिए एक निवारक दण्ड अपेक्षित है – अपील खारिज। (सुनील वि. म.प्र. राज्य) ...2406

दण्ड संहिता, (1860 का 45), धाराएँ 395 व 397 – देखें – साक्ष्य अधिनियम 1872, धारा 9 (महेन्द्र सिंह वि. म.प्र. राज्य) ...2989

दण्ड संहिता, (1860 का 45), धारा 420 – देखें – दण्ड प्रक्रिया संहिता, 1973, धाराएँ 397, 401 (प्रमोद वि. म.प्र. राज्य) ...2466

दण्ड संहिता (1860 का 45), धाराएँ 467 व 468 – कूटरचना – आवेदक ने बेईमानीपूर्वक परिवादियों से धन प्राप्त किया और उन्हें चेक जारी किये जिनका भुगतान नहीं हुआ – कोई अभिकथन नहीं कि चेक मिथ्या या गढ़े हुए थे – यह नहीं कहा जा सकता कि चेक परिवादियों को धोखा देने के आशय से कूट रचित किये गए – धारा 467 व 468 के अधीन अपराध के लिए आवेदक की दोषसिद्धि अपास्त – पुनरीक्षण अंशतः मंजूर। (अनिल कुमार गुप्ता वि. म.प्र. राज्य)...2453

दण्ड संहिता (1860 का 45), धारा 498–ए – क्रूरता – धारा 498–ए के दाण्डिक उपबंध आपराधिक विधि (द्वितीय संशोधन) अधिनियम, 1983 के द्वारा अंतःस्थापित जो 25.12.1983 से प्रभावशील – धारा 498–ए की पुरःस्थापना के पूर्व के अवसर तत्संबंधी दायित्व अभिनिश्चित करने के लिए विचार में नही लिये जा सकते। (प्रहलाद तनवानी वि. म.प्र. राज्य) ...3284

दण्ड संहिता (1860 का 45), धाराएँ 498–ए, 306 – देखें – साक्ष्य अधिनियम, 1872, धारा 8, (प्रहलाद तनवानी वि. म.प्र. राज्य) ...3284

निःशक्त व्यक्ति (समान अवसर, अधिकार संरक्षण और पूर्ण भागीदारी) अधिनियम, 1995 (1996 का 1), धाराएँ 32, 33 – निःशक्त व्यक्तियों को आरक्षण विकलांग होने के कारण अपाहिज को उपलब्ध कराया गया किन्तु नेत्रहीन, बधिर और गूंगों को कोई राहत प्रस्तावित नही की गयी – नौकरशाही तंत्र विधायन को लागू करने में असफल रहा – सरकार स्थापना में पदों को निश्चित करने के लिए कर्तव्य द्वारा आबद्ध है जिसमें नेत्रहीन, बधिर, गूंगों और प्रमस्तिष्कीय लकवाग्रस्त के लिए आरक्षण करना चाहिए – अधिसूचना जारी करके शर्त के अध्यधीन कोई स्थापना आरक्षण के कार्यक्षेत्र से विमुक्त की सकती है – ऐसी कोई अधिसूचना जारी नही की गई – अभिनिर्धारित – वास्तविक लाभ नेत्रहीन, बधिर, गूंगों और प्रमस्तिष्कीय लकवाग्रस्त के वर्ग के

notification issued - Held - Real benefit has not been extended to the class of blind, deaf, dumb and cerebral palsy - State Government directed to identify the class of blind, deaf, dumb and cerebral palsy and implement provisions of Act and Rules. [Nilesh Singhal v. State of M.P.] ...2264

Police Regulations, M.P., Regulations 238 - *Conviction in criminal offence - Appellant convicted u/ss 498A, 304B of IPC - Sentence suspended in appeal - There is no stay of judgment of conviction - Authority was entitled to impose the punishment of removal - Appeal dismissed.* [Shiv Babu Shukla v. State of M.P.] ...2500

Police Regulations, M.P., Regulations 238 & 240 - *Conviction in criminal offence - Appellant working as Head Constable - Convicted u/ss 498A, 304B of IPC - Sentence suspended in appeal - Appellant removed from service on the ground of conviction - Held - Regulation 238 is peremptory in nature and discretion granted is in the proviso - It is not inherent that authority has no option but to wait till conviction is affirmed in appeal - Authority was entitled to impose the punishment of removal - Appeal dismissed.* [Shiv Babu Shukla v. State of M.P.] ...2500

Police Regulations, Regulation 744 - See - *Criminal Procedure Code, 1973, Section 154* [Ashok v. State of M.P.] ...2997

Post Graduate Medical Education Regulation, 2000, Regulation 10(3) - See - *Chikitsa Shiksha Niyantran Adhiniyam, M.P., 1973, Section 10* [Medical Council of India v. Dr. Teena Khatri] ...2799

Powers of the Courts - *It is well settled principle of law that court by way of direction cannot introduce a new clause which has been deleted by the legislature - It would mean enacting a new law which is beyond the powers of the court.* [Ganesh Prasad Madan v. State Transport Appellate Tribunal] ...2601

Pre P.G. Entrance Examination for Medical & Dental Post Graduate Courses, 2008, - See - *Medical Council Act, 1956, Sections 10A & 11(2),* [Vinod Kumar (Dr.) v. State of M.P.] ...3090

Prevention of Corruption Act (49 of 1988), Sections 7, 13(1)(d) r/w *Section 13(2), Criminal Procedure Code, 1973, Section 374(2) - Burden of Proof - Held - The onus on an accused is not as heavy as that of the prosecution - It may be compared with a defendant in a civil proceeding - Appeal allowed.* [Navkant Sharma v. State of M.P.] ...2425

Prevention of Corruption Act, (49 of 1988), Section 13(1)(d), (2) - See -*Criminal Procedure Code, 1973, Section 216* [Manjulata Tiwari (Smt.) v. State of M.P.] ...2731

Prevention of Corruption Act (49 of 1988), Section 20 - *Presumption - U/s 20 of the Act there is statutory presumption of acceptance of bribe if offence u/s 7 or 11 or 13(1)(a) or 13(1)(b) is proved - It is for accused to*

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लिए विस्तारित नही किया गया है – राज्य सरकार को नेत्रहीन, बधिर, गूंगों और प्रमस्तिष्कीय लकवाग्रस्त का वर्ग निश्चित करने और अधिनियम व नियम के उपबंधों को लागू करने के लिए निदेशित किया गया। (नीलेश सिंघल वि. म.प्र. राज्य) ...2264

पुलिस विनियम, म.प्र., विनियम 238 – दाण्डिक अपराध में दोषसिद्धि – अपीलार्थी भा.द.सं. की धारा 498ए, 304बी के अन्तर्गत दोषसिद्ध किया गया – अपील में दण्डादेश निलंबित – दोषसिद्धि के निर्णय पर कोई रोक नही – प्राधिकारी हटाये जाने का दण्ड अधिरोपित करने के लिए हकदार था – अपील खारिज। (शिवबाबू शुक्ला वि. म.प्र. राज्य) ...2500

पुलिस विनियम, म.प्र., विनियम 238 व 240 – दाण्डिक अपराध में दोषसिद्धि – अपीलार्थी प्रधान आरक्षक के रूप में कार्यरत – भा.द.सं. की धारा 498ए, 304बी के अन्तर्गत दोषसिद्ध किया गया – दण्डादेश अपील में निलंबित – अपीलार्थी को दोषसिद्धि के आधार पर सेवा से हटाया गया – अभिनिर्धारित – विनियम 238 अनिवार्य प्रकृति का है और परन्तुक में विवेकाधिकार दिया गया है – यह अन्तर्निहित नही है कि प्राधिकारी के पास दोषसिद्धि की अपील में पुष्टि होने तक इंतजार करने के अतिरिक्त कोई विकल्प नही है – प्राधिकारी हटाये जाने का दण्ड अधिरोपित करने के लिए हकदार था – अपील खारिज। (शिवबाबू शुक्ला वि. म.प्र. राज्य) ...2500

पुलिस विनियम, विनियम 744 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 154 (अशोक वि. म.प्र. राज्य) ...2997

स्नातकोत्तर चिकित्सा शिक्षा विनियम, 2000, विनियम 10(3) – देखें – चिकित्सा शिक्षा नियंत्रण अधिनियम, म.प्र., 1973, धारा 10 (मेडीकल कांउसिल ऑफ इंडिया वि. डॉ. टीना खत्री) ...2799

न्यायालयों की शक्तियाँ – विधि का यह सुस्थापित सिद्धांत है कि न्यायालय निदेश के माध्यम से नवीन खण्ड पुरःस्थापित (introduce) नही कर सकता जो विधायिका द्वारा हटा दिया गया है – इसका अर्थ होगा, नवीन विधि अधिनियमित करना न्यायालय की शक्ति से परे है। (गणेश प्रसाद मदन वि. स्टेट ट्रांसपोर्ट अपीलियेट ट्रिब्यूनल) ...2601

चिकित्सा और दंत स्नातकोत्तर पाठ्यक्रमों के लिए पूर्व स्नातकोत्तर प्रवेश परीक्षा, 2008, – देखें – चिकित्सा परिषद् अधिनियम, 1956, धाराएँ 10ए व 11(2), (विनोद कुमार (डॉ.) वि. म.प्र. राज्य) ...3090

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराएँ 7, 13(1)(डी) सहपठित धारा 13(2), दण्ड प्रक्रिया संहिता, 1973, धारा 374(2) – सबूत का भार – अभिनिर्धारित – अभियुक्त पर भार उतना भारी नहीं है जितना कि अभियोजन पर – उसकी तुलना सिविल कार्यवाही में प्रतिवादी से की जा सकती है – अपील मंजूर। (नवकांत शर्मा वि. म.प्र. राज्य) ...2425

भ्रष्टाचार निवारण अधिनियम, (1988 का 49), धारा 13(1)(डी), (2) – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 216 (मंजूलता तिवारी (श्रीमति) वि. म.प्र. राज्य) ...2731

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 20 – उपधारणा – यदि धारा 7 या 11 या 13(1)(ए) या 13(1)(बी) के अधीन अपराध साबित कर दिया जाता है तो अधिनियम की धारा 20 के अन्तर्गत रिश्वत ग्रहण करने की वैधानिक उपधारणा की जायेगी – अभियुक्त के लिए

explain and rebut the presumption by leading evidence. [Baijnath Prasad Patel v. State of M.P.] ...3304

Prevention of Food Adulteration Act (37 of 1954), Sections 7(1) & 16(1)(a)(i) - See - *Criminal Procedure Code, 1973, Section 433,* [Antar Singh v. State of M.P.] ...*91

Prevention of Food Adulteration Act (37 of 1954), Sections 7(i), 16(1)(a)(i) - *Sentence - Applicant convicted and sentenced to rigorous imprisonment for 6 months and fine of Rs.1000/- - Held - In view of mandatory provision of Section 16(1) of Act, no sentence lesser than the minimum prescribed by the statute can be imposed - Revision dismissed.* [Munnalal v. State of M.P.] ...*80

Prevention of Food Adulteration Act (37 of 1954), Section 13(2) - *Presumption of service of notice sent by registered post - Notice alongwith report of Public Analyst was sent to applicant's address by registered post - Held - There would be presumption of service of notice sent by registered post - Mere fact that A.D. receipt was not filed was not sufficient to rebut or dislodge the presumption of service of notice in absence of any evidence to the contrary.* [Chhotelal v. State of M.P.] ...2458

Prevention of Food Adulteration Act (37 of 1954), Section 13(2) - ***Report of Public Analyst*** *- Report of Public Analyst sent after 75 days - Applicant not availed opportunity for getting another part of sample to be analyzed by Central Food Laboratory - Nothing to show how applicant became prejudiced on that account - Applicant cannot avail any benefit for his own lapse - Revision dismissed.* [Bhanwarlal v. State of M.P] ...*75

Prevention of Food Adulteration Act (37 of 1954), Section 16(1)(a) r/w Section 7(1), Criminal Procedure Code, 1973, Section 433 - *Reduction of minimum sentence in the domain of the State Government - Conviction u/s 16(1)(a) of the Act upheld by High Court - Provisions mandate that 6 months' minimum imprisonment to be imposed for such offence - Applicant aged 63 years and more than 17 years elapsed since incident - Applicant had suffered 37 days of imprisonment - Looking to the agony and mental harassment already faced - High Court directed applicant to deposit Rs.10,000/- as fine in commutation of the sentence of 6 months imprisonment and State Government to consider such commutation u/s 433(d) of Code.* [Tulsiram v. State of M.P.] ...2462

Prevention of Food Adultration Act (37 of 1954), Section 16(1)(a)(i) - Prevention of Food Adulteration Rules, 1955, Rules 17 & 18 - *Whether the entire quantity of article of food stored in the container required to be stirred at the time of taking of sample - Held - If it was a usual practice to stir entire quantity of Dahi stored in a container before sale, it ought to have been done before selling to Food Inspector also - Accused cannot blame*

आवश्यक है कि वह साक्ष्य पेश करके स्थिति स्पष्ट करे और उपधारणा को खण्डित करे। (वैद्यनाथ प्रसाद पटेल वि. म.प्र. राज्य) ...3304

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धाराएँ 7(1) व 16(1)(ए)(i) – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 433, (अंतर सिंह वि. म.प्र. राज्य) ...*91

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 7(i), 16(1)(ए)(i) – दण्डादेश – आवेदक दोषसिद्ध किया गया और 6 माह के सश्रम कारावास एवं रु. 1000/– जुर्माने से दण्डित किया गया – अभिनिर्धारित – अधिनियम की धारा 16(1) के आज्ञापक उपबंधों को दृष्टिगत रखते हुए अधिनिमिति द्वारा विहित न्यूनतम से कम दण्डादेश अधिरोपित नही किया जा सकता – पुनरीक्षण खारिज। (मुन्नालाल वि. म.प्र. राज्य) ...*80

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 13(2) – रजिस्टर्ड डाक द्वारा भेजे गये सूचनापत्र की तामील की उपधारणा – लोक विश्लेषक की रिपोर्ट के साथ सूचनापत्र आवेदक के पते पर रजिस्टर्ड डाक द्वारा भेजा गया – अभिनिर्धारित – रजिस्टर्ड डाक द्वारा भेजे गये सूचनापत्र की तामील की उपधारणा की जाएगी – केवल यह तथ्य, कि ए.डी. रसीद पेश नहीं की गई, किसी प्रतिकूल साक्ष्य के अभाव में, सूचनापत्र की तामील की उपधारणा का खण्डन या विस्थापन करने के लिए पर्याप्त नही। (छोटेलाल वि. म.प्र. राज्य) ...2458

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 13(2) – लोक विश्लेषक की रिपोर्ट – लोक विश्लेषक की रिपोर्ट 75 दिन के बाद भेजी गई – आवेदक ने केन्द्रीय खाद्य प्रयोगशाला द्वारा नमूने के दूसरे भाग का विश्लेषण कराने के अवसर का लाभ नही उठाया – यह दर्शाने के लिए कुछ भी नही कि इससे आवेदक को कैसे पूर्वाग्रह हुआ – आवेदक उसकी स्वयं की गलती का कोई लाभ नही ले सकता है – पुनरीक्षण खारिज। (भंवरलाल वि. म.प्र. राज्य) ...*75

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 16(1)(ए) सहपठित धारा 7(1), दण्ड प्रक्रिया संहिता, 1973, धारा 433 – न्यूनतम दण्डादेश में कमी करना राज्य सरकार के अधिकार क्षेत्र में – अधिनियम की धारा 16(1)(ए) के अधीन दोषसिद्धि उच्च न्यायालय द्वारा पुष्ट की गई – उपबंध आदेशित करते हैं कि ऐसे अपराध के लिए कम से कम 6 माह का कारावास अधिरोपित किया जाना चाहिए – आवेदक की उम्र 63 वर्ष और घटना को 17 वर्ष से अधिक का समय व्यतीत – आवेदक 37 दिन का कारावास भुगत चुका था – कष्ट और मानसिक परेशानी, जिसका पहले ही सामना किया जा चुका है, को देखते हुए – उच्च न्यायालय ने आवेदक को छः माह के कारावास के दण्डादेश के लघुकरण में 10,000/– रुपये जुर्माने के रूप में जमा करने और राज्य सरकार को संहिता की धारा 433(डी) के अधीन ऐसे लघुकरण पर विचार करने के निदेश दिये। (तुलसीराम वि. म.प्र. राज्य) ...2462

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 16(1)(ए)(i), खाद्य अपमिश्रण निवारण नियम, 1955, नियम 17 व 18 – क्या नमूना लेते समय पात्र में संचित खाद्य पदार्थ की सम्पूर्ण मात्रा को हिलाना आवश्यक है – अभिनिर्धारित – यदि यह एक सामान्य प्रथा थी कि विक्रय से पूर्व पात्र में संचित दही की सम्पूर्ण मात्रा को हिलाया जाए, तो खाद्य निरीक्षक को विक्रय करने के पूर्व भी ऐसा अवश्य किया जाना चाहिए था – अभियुक्त दायित्व से बचने के लिए

anybody and raise it as a technical defence to escape liability - Revision dismissed. [Om Prakash Agrawal v. State of M.P.] ...*73

Prevention of Food Adulteration Act (37 of 1954), Section 20(1) - *Notification dated 31.12.59 & 19.10.83 authorising Food Inspector to institute prosecution - Food Inspector was competent to file complaint.* [Tulsiram v. State of M.P.] 2462

Prevention of Food Adulteration Rules, 1955, Rule 22B - *Quantity of sample - 220 ml. of milk sample sent to Public Analyst - Public Analayst nowhere pointed out that sample was insufficient for analysis - Cannot be said that insufficient quantity was sent for analysis.* [Bhanwarlal v. State of M.P] ...*75

Public Interest Litigation - *Can PIL be entertained on the basis of information in the newspapers - Normally, a PIL cannot be entertained solely on the basis of information published in the newspapers but if the Chief Justice or a Judge designate finds that a particular information published in the newspapers reveals gross violation of a fundamental right guaranteed under Part-III of the Constitution of a person who does not have ready access to the court for some incapacity or the other, particularly the right to life and liberty granted under Article 21 of the Constitution, and the Chief Justice or a Judge designate has reason to believe the information to be true, a PIL can be entertained only on the basis of such information published in the newspapers for the same reasons as have been given by the Supreme Court in Bandhua Mukti Morcha (AIR 1984 SC 802) for entertaining a letter petition.* [S.P. Anand v. The Registrar General, M.P. High Court, Jabalpur] (FB)...2172

Public Interest Litigation - *Payment of court fees* - *Held - Court fees are payable on a PIL filed as a writ petition under Article 226 of the Constitution, except where the Chief Justice or a Judge designate directs on the basis of information received in a letter or any other document and considers that it is a fit case for registering a case under Article 226 of the Constitution even though no court fee is paid on such letter or document.* [S.P. Anand v. The Registrar General, M.P. High Court, Jabalpur] (FB)...2172

Public Services (Promotion) Rules, M.P. 2002 - See - *Constitution, Article 16(4A) [77th and 85th Amendment],* [Shiv Nath Prasad v. Saran Pal Jeet Singh Tulsi] SC...3059

Public Trusts Act, M.P. (30 of 1951), Sections 2(4), 4 & 5 - *Private temple is not covered by provisions of the Act.* [Gayaprasad v. State of M.P.] ...3200

Public Trusts Act, M.P. (30 of 1951), Section 32, Land Revenue Code, M.P. 1959, Sections 57 & 158 - *Whether a Pujari, Manager or Trustee be the owner of temple, when it is recorded in the name of deity in the revenue records - Held - It is a Public Temple, if the land is recorded in the name of*

किसी व्यक्ति को दोष नही दे सकता और तकनीकी बचाव के रूप में इसे नही उठा सकता – पुनरीक्षण खारिज। (ओम प्रकाश अग्रवाल वि. म.प्र. राज्य) ---*73

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 20(1) – अधिसूचना दिनांकित 31.12.59 और 19.10.83 खाद्य निरीक्षक को अभियोजन संस्थित करने के लिए अधिकृत करती हैं – खाद्य निरीक्षक परिवाद पेश करने के लिए सक्षम था। (तुलसीराम वि. म.प्र. राज्य)...2462

खाद्य अपमिश्रण निवारण नियम, 1955, नियम 22बी – नमूने की मात्रा – दूध के नमूने का 220 मि.लि. लोक विश्लेषक को भेजा गया – लोक विश्लेषक ने कहीं भी इंगित नही किया कि नमूना विश्लेषण के लिए अपर्याप्त था – यह नही कहा जा सकता कि विश्लेषण के लिए अपर्याप्त मात्रा भेजी गई। (भंवरलाल वि. म.प्र. राज्य) ...*75

लोक हित वांद – क्या समाचार पत्रों में जानकारी के आधार पर पीआईएल ग्रहण की जा सकती है – सामान्यतः कोई पीआईएल एकमात्र समाचार पत्रों में प्रकाशित जानकारी के आधार पर ग्रहण नही की जा सकती किन्तु यदि मुख्य न्यायाधीश या मनोनीत न्यायाधीश यह पाते हैं कि समाचार पत्रों में प्रकाशित कोई विशिष्ट जानकारी संविधान के भाग तीन के अन्तर्गत प्रत्याभूत किसी व्यक्ति के किसी मूल अधिकार, विशिष्टतः संविधान के अनुच्छेद 21 के अन्तर्गत प्रदत्त प्राण और स्वतंत्रता का अधिकार, का घोर उल्लंघन प्रकट करती है, जो कुछ असमर्थता या अन्य किसी कारण से न्यायालय तक पहुंचने को तत्पर नही है और मुख्य न्यायाधीश या मनोनीत न्यायाधीश जानकारी के सत्य होने का विश्वास करने का कारण रखते हैं तो एक पीआईएल केवल समाचार पत्रों में प्रकाशित ऐसी जानकारी के आधार पर ग्रहण की जा सकती है उन्ही कारणों से जो उच्चतम न्यायालय द्वारा बंधुआ मुक्ति मोर्चा (एआईआर 1984 एससी 802) में पत्र याचिका को ग्रहण करने के लिए दिये गये हैं। (एस. पी. आनंद वि. द राजिस्ट्रार जनरल, एम.पी. हाई कोर्ट, जबलपुर) (FB)...2172

लोक हित वाद – न्यायालय फीस का संदाय – अभिनिर्धारित – जहाँ मुख्य न्यायाधीश या कोई मनोनीत न्यायाधीश किसी पत्र में प्राप्त जानकारी या किसी अन्य दस्तावेज के आधार पर निदेशित करते हैं और यह विचार करते हैं कि यह संविधान के अनुच्छेद 226 के अधीन मामला रजिस्टर्ड करने के लिए उचित मामला है यद्यपि ऐसे पत्र या दस्तावेज पर कोई न्यायालय फीस न दी गई हो, वहां के अलावा संविधान के अनुच्छेद 226 के अधीन रिट याचिका के रूप में में पेश पीआईएल पर न्यायालय फीस देय है। (एस.पी. आनंद वि. द राजिस्ट्रार जनरल, एम.पी. हाई कोर्ट, जबलपुर) (FB)---2172

लोक सेवा (पदोन्नति) नियम, म.प्र. 2002 – देखें – संविधान, अनुच्छेद 16(4ए) [77वां और 85वां संशोधन], (शिवनाथ प्रसाद वि. सरन पाल जीत सिंह तुलती) SC--3059

लोक न्यास अधिनियम, म.प्र. (1951 का 30), धाराएँ 2(4), 4 व 5 – निजी न्यास, अधिनियम के उपबंधों से आच्छादित नही होता है। (गयाप्रसाद वि. म.प्र. राज्य) ...3200

लोक न्यास अधिनियम, म.प्र. (1951 का 30), धारा 32, भू राजस्व संहिता, म.प्र. 1959, धाराएँ 57 व 158 – क्या एक पुजारी, प्रबंधक या न्यासी मंदिर का स्वामी होता है, जबकि यह राजस्व अभिलेखों में देवता के नाम अभिलिखित है – अभिनिर्धारित – यह एक सार्वजनिक मंदिर है, यदि भूमि देवता के नाम अभिलिखित है, देवता को विधिक व्यक्ति होने से सम्पत्ति धारण करने

deity, deity is having right to hold property being juristic person - Pujari has a limited right to perform Pooja-Archana - He has the right of inheritance subject to qualification and is not automatic - No Pujari or Trustee or Manager can claim the title in respect of the religious property and such property shall always belong to deity - Pujari can be removed if he is otherwise disqualified or is not able to manage the temple property. [Gayaprasad v. State of M.P.] ...3200

**Public Works Department Engineer-in-Chief and Chief Engineer Recruitment Rules, M.P. 1983, Shaskiya Sewak Adhiwarshiki Ayu Adhiniyam, M.P. 1967, Shaskiya Sewak Adhiwarshiki Ayu Sansodhan Adhiniyam, M.P. 1998 - *Re-appointment after retirement* - *The State Government has granted re-appointment to a competent and experienced officer in the larger public interest and the same does not suffer from legal malice at all - It is not a case where a Government servant is being continued in service by virtue of his initial appointment beyond 60 years of age.* [Lalan Thakur v. State of M.P.] ...3116

Rajya Prashasnik Adhikaran (Lambit Evam Nirakrat Avedano Ka Antaran) Adhyadesh, M.P. 2003 - See - *Constitution, Article 14, 16 & 226* [Nandkishore Narolia v. State of M.P.] ...2591

Reorganization Act, M.P. (20 of 2000), Section 68 - *Allocation* - *Employees getting Kramonnati forming separate group as per notification dated 22.03.2001 - Circular dated 26.12.2001 issued by State Government making provision that only those employees will be included in Kramonnati Pay Scale whose orders have been issued prior to publication of Tentative Final Allocation List - Held - Government servants getting Kramonnati Pay Scale forms separate group - It was incumbent on Government to have harmonized Clause 6(4) and (5) instead further classify by picking up separate cut off date - State Government was not justified in carving out a separate rule by introducing new cut off date vide its circular dated 26.12.2001 - Does not satisfy principle of equality enshrined under Article 14 of Constitution - Allocation of appellants to Chhatisgarh quashed - Appeal allowed.* [R.S. Chourasiya v. Union of India] ...2802

Reorganisation Act, M.P. (20 of 2000), Section 72 - See - *Constitution, Articles 14, 16, 21, 226, 227, 257, 323-A, 323-B,* [Vinay Shukla v. State of M.P.] ...2898

Right to Information Act (22 of 2005), Section 6, Right to Information (Regulation of Fee and Cost) Rules, 2005, Rules 2(e), 4 - *Competent Authority* - *Cantonment Board prescribed rates for issue of information and copies under R.T.I. Act by passing resolution - Held - Cantonment Board is not a Competent Authority as defined under Rule 2(e) of Rules, 2005 - Resolution prescribing rates beyond powers and had no legal sanctity - Board*

का अधिकार होता है – पुजारी को पूजा–अर्चना करने का सीमित अधिकार होता है – उसे योग्यता के अध्यधीन उत्तराधिकार का अधिकार होता है स्वतः नही – कोई पुजारी, न्यासी या प्रबंधक धार्मिक सम्पत्ति के सम्बन्ध में स्वत्व का दावा नही कर सकता और ऐसी सम्पत्ति सर्वदा देवता से सम्बन्धित होगी – पुजारी को हटाया जा सकता है यदि वह अन्यथा निरर्हित हो जाता है या मंदिर सम्पत्ति का प्रबंध करने के लिए समर्थ नही है। (गयाप्रसाद वि. म.प्र. राज्य) ...3200

लोक निर्माण विभाग प्रमुख अभियंता और मुख्य अभियंता भर्ती नियम, म.प्र. 1983, शासकीय सेवक अधिवार्षिकी आयु अधिनियम, म.प्र., 1967, शासकीय सेवक अधिवार्षिकी आयु संशोधन अधिनियम, म.प्र. 1998 – सेवानिवृत्ति के बाद पुनर्नियुक्ति – राज्य सरकार ने व्यापक लोक हित में एक सक्षम और अनुभवी अधिकारी को पुनर्नियुक्ति दी है और यह विधिक दुर्भाव से ग्रस्त नही है – ऐसा मामला नही है कि जहाँ एक शासकीय सेवक को प्रारम्भिक नियुक्ति के आधार पर 60 वर्ष की आयु के बाद सेवा में बनाये रखा हो। (लालन ठाकुर वि. म.प्र. राज्य) ...3116

राज्य प्रशासनिक अधिकरण (लंबित एवं निराकृत आवेदनों का अंतरण) अध्यादेश, म.प्र. 2003 – देखें – संविधान, अनुच्छेद 14, 16 व 226 (नंदकिशोर नारोलिया वि. म.प्र. राज्य) ...2591

पुनर्गठन अधिनियम, म.प्र. (2000 का 20), धारा 68 – आबंटन – क्रमोन्नति प्राप्त करने वाले कर्मचारी अधिसूचना तारीख 22.03.2001 के अनुसार पृथक समूह बना रहे – राज्य सरकार द्वारा यह उपबंध करते हुए परिपत्र तारीख 26.12.2001 जारी किया गया कि केवल वे कर्मचारी क्रमोन्नति वेतनमान में शामिल होंगे जिनके आदेश प्रायोगिक अंतिम आबंटन सूची के प्रकाशन के पूर्व जारी किये गये हैं – अभिनिर्धारित – क्रमोन्नति वेतनमान पाने वाले कर्मचारी पृथक समूह निर्मित करते हैं – सरकार के लिए यह बाध्यकारी था कि पृथक कट ऑफ तारीख चुनने के द्वारा अतिरिक्त वर्गीकरण करने के बजाय खण्ड 6(4) व (5) को समरूप करती – राज्य सरकार परिपत्र तारीख 26.12.2001 द्वारा नवीन कट ऑफ तारीख प्रस्तावित करके एक अलग नियम बनाने में न्यायसंगत नही थी – संविधान के अनुच्छेद 14 के अन्तर्गत संरक्षित समानता के सिद्धांत की तुष्टि नही करती – अपीलार्थियों का छत्तीसगढ़ को आबंटन अभिखण्डित – अपील मंजूर। (आर.एस. चौरसिया वि. यूनियन ऑफ इंडिया) ...2802

पुनर्गठन अधिनियम, म.प्र. (2000 का 20), धारा 72 – देखें – संविधान, अनुच्छेद 14, 16, 21, 226, 227, 257, 323–ए, 323–बी (विनय शुक्ला वि. म.प्र. राज्य) ...2898

सूचना का अधिकार अधिनियम (2005 का 22), धारा 6, सूचना का अधिकार (फीस और लागत का विनियमन) नियम, 2005, नियम 2(ई), 4 – सक्षम प्राधिकारी – छावनी बोर्ड ने प्रस्ताव पारित कर सूचना का अधिकार अधिनियम के अन्तर्गत जानकारी और प्रतिलिपियाँ जारी करने के लिए दरें विहित कीं – अभिनिर्धारित – छावनी बोर्ड, नियम 2005 के नियम 2(ई) के अन्तर्गत यथा परिभाषित सक्षम प्राधिकारी नही है – दरें विहित करने वाला प्रस्ताव शक्तियों के परे और कोई

directed to refund the money received by them in excess of fee liable to paid according to Rules, 2005 to the persons who deposited the money - Petition allowed. [Amar Chand Bawaria v. Union of India] ...3132

Right to Information (Regulation of Fee and Cost) Rules, 2005, Rules 2(e), 4 - See - *Right to Information Act, 2005, Section 6,* [Amar Chand Bawaria v. Union of India] ...3132

Rules of the Road Regulations, 1989, Rule 20(3), (4) - See - *Motor Vehicles Act, 1988, Section 166,* [Meera (Smt.) v. Jolly Road Lines] ...3273

Sahkari Krishi Aur Gramin Vikas Bank Adhiniyam, M.P., 1999 (20 of 2000), Section 50(2), Penal Code, 1860, Sections 52, 294, 452, 392, 500, 506 r/w 34, General Clauses Act, 1897, Section 3 Clause 22 - ***Good Faith - Defined & Explained*** *- Without serving the notice on non-applicants and in pressing them to pay the entire amount on the same date and taking the steps to recover such amount forcibly can not be said to be justified. Apart from this, committing house trespass, abusing filthy languages, criminally intimidating, insulting and lowering down the prestige of the non-applicants can not be said to be done in good faith and can not form the part of their duties.* [Arvind Kumar Bhargava v. Lalit Parashar] ...2471

Sahkari Krishi Aur Gramin Vikas Bank Adhiniyam, M.P., 1999 (20 of 2000), Section 50(2), Penal Code, 1860, Sections 294, 452, 392, 500, 506 r/w Section 34, Criminal Procedure Code, 1973 Sections 190 & 197 - *Applicants working in Shakari Bank seeking quashment of criminal proceedings on the ground of protection given u/s 197(1) Cr.P.C. - Held - The applicants are not removable by the Government, therefore, protection given u/s 197(1) Cr.P.C. is not available to them - Petition dismissed.* [Arvind Kumar Bhargava v. Lalit Parashar] ...2471

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(x) - *Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view - Applicants assaulted the complainant as he had lodged a police report against applicant in past - No nexus between commission of offence and caste of victim - Mere uttering the word 'Chamra' cannot be taken as sufficient for holding commission of offence - Order framing charge u/s 3(1)(x) set-aside - Revision allowed.* [Surendra Kaurav v. State of M.P.] ...*83

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002), Section 2(c) - *Various debts owed to respondent No.1 are assigned to respondent No.3 which is a private bank - Held - Respondent No.3 is a banking company within the meaning of Section 2(c) - No prior notice is required before assignment of N.P.A. - No prohibition that one bank could not assign its debts together with underlying securities*

विधिक शुद्धता नही रखता था – बोर्ड को उनके द्वारा नियम 2005 के अनुसार देय फीस के अतिरिक्त प्राप्त फीस, उन व्यक्तियों को, जिन्होंने धन जमा किया, वापस करने के निदेश दिये गये – याचिका मंजूर। (अमर चंद बावरिया वि. यूनियन ऑफ इंडिया) ...3132

सूचना का अधिकार (फीस और लागत का विनियमन) नियम, 2005, नियम 2(ई), 4 – देखें – सूचना का अधिकार अधिनियम, 2005, धारा 6, (अमर चंद बावरिया वि. यूनियन ऑफ इंडिया) ...3132

सड़क विनियमन के नियम, 1989, नियम 20(3) व (4) – देखें – मोटर यान अधिनियम, 1988, धारा 166, (मीरा (श्रीमति) वि. जॉली रोड लाइंस) ...3273

सहकारी कृषि और ग्रामीण विकास बैंक अधिनियम, म.प्र., 1999 (2000 का 20), धारा 50(2), दण्ड संहिता, 1860, दण्ड संहिता, 1860, धाराएँ 52, 294, 452, 392, 500, 506 सहपठित धारा 34, साधारण खंड अधिनियम, 1897, धारा 6 खंड 22 – सद्भाव – परिभाषित एवं स्पष्ट करना – अनावेदकों पर सूचनापत्र की तामील किये बिना और उन पर सम्पूर्ण राशि उसी दिन अदा करने के लिए दवाब डालने में और ऐसी राशि की बलपूर्वक वसूली करने के लिए कदम उठाना न्यायसंगत नही कहा जा सकता है – इसके अलावा गृह अतिचार करना, गंदी गालीयुक्त भाषा का प्रयोग करना, आपराधिक रूप से अभित्रस्त करना, अपमानित करना और अनावेदकों की प्रतिष्ठा को निम्नतर करना सद्भाव में किया गया नही कहा जा सकता और उनके कर्तव्यों का भाग नही बन सकता। (अरविंद कुमार भार्गव वि. ललित पाराशर) ...2471

सहकारी कृषि और ग्रामीण विकास बैंक अधिनियम, म.प्र., 1999 (2000 का 20), धारा 50(2), दण्ड संहिता, 1860, धाराएँ 294, 452, 392, 500, 506 सहपठित धारा 34, दण्ड प्रक्रिया संहिता, 1973 धाराएँ 190 व 197 – सहकारी बैंक में कार्यरत आवेदकों ने द.प्र.सं. की धारा 197(1) के अन्तर्गत दिये संरक्षण के आधार पर आपराधिक कार्यवाहियों का अभिखण्डन चाहा – अभिनिर्धारित – आवेदकों को सरकार द्वारा नहीं हटाया जा सकता, इसलिए द. प्र.सं. की धारा 197(1) के अन्तर्गत दिया गया संरक्षण उन्हें उपलब्ध नहीं है। (अरविंद कुमार भार्गव वि. ललित पाराशर) ...2471

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(x) – अनुसूचित जाति या अनुसूचित जनजाति के सदस्य को नीचा दिखाने के आशय से किसी लोक दृष्टिगोचर स्थान में साशय अपमानित या अभित्रस्त करना – आवेदकों ने परिवादी पर हमला किया क्योंकि उसने पूर्व में आवेदक के विरुद्ध पुलिस में रिपोर्ट दर्ज करायी थी – अपराध कारित करने और पीड़ित व्यक्ति की जाति के बीच कोई सम्बन्ध नही – केवल 'चमरा' शब्द उच्चारित करना अपराध कारित होना अभिनिर्धारित करने के लिए पर्याप्त नही माना जा सकता है – धारा 3(1)(x) का आरोप विरचित करने का आदेश अपास्त – पुनरीक्षण मंजूर। (सुरेन्द्र कौरव वि. म.प्र. राज्य) ...*83

वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन और प्रतिभूति हित प्रवर्तन अधिनियम (2002 का 54), धारा 2(सी) – प्रत्यर्थी क्र. 1 को देय विविध ऋण प्रत्यर्थी क्र. 3 को समनुदिष्ट किये गये जो एक निजी बैंक है – अभिनिर्धारित – प्रत्यर्थी क्र. 3 धारा 2(सी) के अर्थ के अन्तर्गत एक बैंकिंग कम्पनी है – एन.पी.ए. के समनुदेशन के पूर्व कोई सूचनापत्र अपेक्षित नही – कोई निषेध नही कि भारतीय रिजर्व बैंक की गाइडलाइन तारीख 13.07.2005 के अन्तर्गत एक बैंक

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to another bank under guidelines of RBI dated 13.07.2005 - Respondent No.3 competent to take action - Petition dismissed. [Paresh Spinners Ltd. v. State Bank of India] ...2571

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002), Sections 4, 10, 12, 13 & 38, The Security Interest (Enforcement) Rules, 2002, Rules 8 & 9(2) - *Whether authorised officer is bound to sell the immovable property with the consent of the borrower and secured creditor, if he fails to obtain higher price than reserve price or it is the discretion of the authorised officer to obtain the consent of the borrower and secured creditor or without consent he can effect the sale lower than the reserve price - Held - Bank is obliged not to auction sale the property below the reserve price - However the word 'may' used cannot be interpreted as mandatory dictate to the Bank to not sell the property below the reserve price - Petition disposed of.* [Godawari Shridhar (Smt.) v. Union Bank of India] ...2918

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002), Sections 13 & 14, Transfer of Property Act, 1882, Section 53-A - *The accounts of the borrowers become non-performing assets and thus action u/s 14 of Act 2002 was initiated for taking possession of mortgaged property - The appellants contended that substantial consideration was paid by them in pursuance of an agreement to sale, therefore, entitled to retain possession of mortgaged property u/s 53-A of T.P. Act - Learned Single Judge held that agreement of sale was on plain paper and did not disclose the mode of payment, therefore, agreement was doubted and unreliable - Order challenged in W.A. - Held - Appellants can, on the basis of agreement on plain paper, claim that in pursuance of agreement to sale they were inducted - The claim of appellants is anchored on the provisions of Section 53-A of T.P. Act and such disputed questions cannot normally be decided in a Writ Petition - Admittedly, appellants are in possession of the property, therefore, time granted upto 31.10.2008 to vacate the property.* [Abhay Kumar v. Chief Manager, State Bank of Indore] ...2780

Shaskiya Sewak Adhiwarshiki Ayu Adhiniyam, M.P. (29 of 1967) - **See** - *Public Works Department Engineer-in-Chief and Chief Engineer Recruitment Rules, M.P. 1983,* [Lalan Thakur v. State of M.P.] ...3116

Shaskiya Sewak Adhiwarshiki Ayu Sansodhan Adhiniyam, M.P. (3 of 1998) - **See** - *Public Works Department Engineer-in-Chief and Chief Engineer Recruitment Rules, M.P. 1983,* [Lalan Thakur v. State of M.P.] ...3116

Small Scale Exemption - *General Exemption No.1 (Notification No.1/93-C.E., dated 28.02.1993 as amended) Clause 4 - See - Central Excise and Salt Act, 1944, Section 5A(1)* [Jepika Paints v. Union of India) ...2625

दूसरी बैंक को पूर्वाधिकार प्रतिभूतियों के साथ अपने ऋण समनुदेशित नही कर सकती – प्रत्यर्थी क्र. 3 कार्यवाही करने के लिए सक्षम – याचिका खारिज। (परेश स्पिनर्स लि. वि. स्टेट बैंक ऑफ इंडिया) ...2571

वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन और प्रतिभूति हित प्रवर्तन अधिनियम (2002 का 54), धाराएँ 4, 10, 12, 13 व 38, प्रतिभूति हित (प्रवर्तन) नियम, 2002, नियम 8 व 9(2) – क्या प्राधिकृत अधिकारी, यदि वह आरक्षित कीमत से उच्चतर कीमत प्राप्त करने में असफल हो जाता है, स्थावर सम्पत्ति ऋणी और प्रतिभूत लेनदार की सहमति से विक्रय करने के लिए बाध्य है या यह प्राधिकृत अधिकारी का विवेकाधिकार है कि ऋणी और प्रतिभूत लेनदार की सहमति प्राप्त करे या बिना सहमति के वह आरक्षित कीमत से कम पर विक्रय को प्रभावी कर सकता है – अभिनिर्धारित – बैंक सम्पत्ति की विक्रय नीलामी आरक्षित कीमत से कम पर न करने के लिए बाध्य है – तथापि शब्द 'may' का प्रयोग किया गया, इसका निर्वचन बैंक को आज्ञापक आदेश कि आरक्षित कीमत से कम पर विक्रय न करें, नही हो सकता – याचिका निपटाई गई। (गोदावरी श्रीधर (श्रीमति) वि. यूनियन ऑफ इंडिया) ...2918

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शासकीय सेवक अधिवार्षिकी आयु अधिनियम, म.प्र., (1967 का 29) – देखें – लोक निर्माण विभाग प्रमुख अभियंता और मुख्य अभियंता भर्ती नियम, म.प्र. 1983, (लालन ठाकुर वि. म.प्र. राज्य) ...3116

शासकीय सेवक अधिवार्षिकी आयु संशोधन अधिनियम, म.प्र. (1998 का 3) – देखें – लोक निर्माण विभाग प्रमुख अभियंता और मुख्य अभियंता भर्ती नियम, म.प्र. 1983, (लालन ठाकुर वि. म.प्र. राज्य) ...3116

लघु छूट – सामान्य छूट क्र. 1 (अधिसूचना क्र. 1/93–सी.ई., तारीख 28.02.1993 यथा संशोधित), खण्ड 4 – देखें – केंद्रीय उत्पाद–शुल्क और नमक अधिनियम, 1944, धारा 5ए(1) (जेपीका पेंटस् वि. यूनियन ऑफ इंडिया) ...2625

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Specific Relief Act (47 of 1963), Section 16(c) - *Specific performance of contract - Notice - Notice sent by plaintiff for execution of sale deed received back with endorsement "Lene Se Inkar" - Held - Even in absence of statement of postman it may held that notice was produced for service and refused by appellant.* [Shivcharan v. Mohanlal] ...3183

Specific Relief Act (47 of 1963), Section 28 - See - *Civil Procedure Code, 1908, Section 115,* [Mohanlal Garg v. M/s. Chaudhary Builders Pvt. Ltd] ...2720

Specific Relief Act (47 of 1963), Section 38 - ***Suit for injunction*** - *Land recorded in the name of temple and name of Pujari is recorded as 'Ehatmam' - Pujari is having very limited right - He is not having any ownership right in the property of temple - Pujari and his brothers were not entitled to partition the property mutually and their possession cannot be treated as exclusive over the temple land - Temple is also necessary party - Plaintiff was not entitled to file even suit for injunction - Suit rightly dismissed.* [Sitaram v. Radheshyam] ...2631

Spot Map - *Merely by exhibiting the map by I.O. - Its cotents would not become admissible in evidence unless the witness on whose instance map was prepared has deposed this fact on oath.* [Narayan v. State of M.P.]...2401

Staff Service Rules, 61 & 62 - See - *Cooperative Societies Act, M.P, 1960, Section 55 & 64* [Sushil Kumar Kanungo v. M.P. Rajya Sahkari Bank Maryadit] ...2238

State Cooperative Tribunal Regulations, 2000, Regulation 31 - See - *Cooperative Societies Act, M.P, 1960, Section 55 & 64,* [Sushil Kumar Kanungo v. M.P. Rajya Sahkari Bank Maryadit] ...2238

State Reorganisation Act, (37 of 1956), Sections 54 & 68 - See - *Constitution, Articles 216, 225, 226* [S.P. Anand v. The Registrar General, M.P. High Court, Jabalpur] (FB)...2172

Succession Act (39 of 1925), Section 63 - ***Execution of unprivileged Wills - Proof of Will*** - *It is necessary that witnesses must have seen the testator signing the will in his presence.* [Shakuntala Devi Singhal v. Goverdhan Das] ...2641

Succession Act (39 of 1925), Sections 213, 214 - ***Proof of representative title*** - *Provisions do not bar institution of suit - Decree will be considered provisional and will come into effect on obtaining and producing probate of will or succession certificate - Plaintiffs are claiming as legal representatives of deceased and decree has been passed - It is directed that decree will not be given effect till plaintiffs obtain and produce the succession certificate.* [Manak Chand Jain v. Pukhraj Bai (Smt.)] ...2619

The Security Interest (Enforcement) Rules, 2002, Rules 8 & 9(2) - See - *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Sections 4, 10, 12, 13 & 38* [Godawari Shridhar (Smt.) v. Union Bank of India] ...2918

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 16(सी) – संविदा का विनिर्दिष्ट पालन – सूचनापत्र – वादी द्वारा विक्रयपत्र के निष्पादन के लिए भेजा गया सूचनापत्र "लेने से इंकार" के पृष्ठांकन के साथ वापस प्राप्त हुआ – अभिनिर्धारित – पोस्टमेन के कथन के बिना भी यह अभिनिर्धारित किया जा सकता है कि सूचनापत्र तामील के लिए भेजा गया और अपीलार्थी द्वारा लेने से इंकार किया गया। (शिवचरण वि. मोहनलाल) ...3183

विनिर्दिष्ट अनुतोष अधिनियम, (1963 का 47), धारा 28 – देखें – सिविल प्रक्रिया संहिता 1908, धारा 115 (मोहनलाल गर्ग वि. मे. चौधरी बिल्डर्स प्रा.लि.) ...2720

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 38 – व्यादेश के लिए वाद – भूमि मंदिर के नाम से अंकित और पुजारी का नाम 'एहतमाम' के रूप में अंकित – पुजारी को बहुत सीमित अधिकार हैं – वह मंदिर की सम्पत्ति में कोई स्वामित्व का अधिकार नही रखता – पुजारी और उसके भाई सम्पत्ति को परस्पर विभाजित करने के हकदार नही थे और मंदिर सम्पत्ति पर उनका कब्जा अनन्य नही माना जा सकता – मंदिर भी आवश्यक पक्षकार है – वादी व्यादेश का वाद भी पेश करने का हकदार नही था – वाद उचित रूप से खारिज किया गया। (सीताराम वि. राधेश्याम) ...2631

घटना स्थल का नक्शा – केवल अनुसंधान अधिकारी द्वारा नक्शे को साक्ष्य में प्रदर्शित करना – इससे उसकी अन्तर्वस्तु साक्ष्य में ग्राह्य नहीं हो जाती जब तक कि साक्षी, जिसके प्रेरण पर नक्शा तैयार किया गया, इस तथ्य का शपथ पर बयान न दे देवे। (नारायण वि. म.प्र. राज्य)...2401

कर्मचारी सेवा नियम, 61 व 62 – देखें – सहकारी सोसायटी अधिनियम, म.प्र., 1960, धारा 55 व 64 (सुशील कुमार कानूनगो वि. एम.पी. राज्य सहकारी बैंक मर्यादित) ...2238

राज्य सहकारी अधिकरण विनियम, 2000, विनियम 31 – देखें – सहकारी सोसायटी अधिनियम, म.प्र., 1960, धारा 55 व 64 (सुशील कुमार कानूनगो वि. एम.पी. राज्य सहकारी बैंक मर्यादित) ...2238

राज्य पुनर्गठन अधिनियम, (1956 का 37), धाराएँ 54 व 68 – देखें – संविधान, अनुच्छेद 216, 225, 226 (एस.पी. आनंद वि. द रजिस्ट्रार जनरल, एम.पी. हाई कोर्ट, जबलपुर) (FB)---2172

उत्तराधिकार अधिनियम (1925 का 39), धारा 63 – विशेषाधिकार रहित वसीयतों का निष्पादन – वसीयत का सबूत – यह आवश्यक है कि साक्षियों को वसीयतकर्ता को उसकी उपस्थिति में वसीयत हस्ताक्षरित करते हुए अवश्य देखना चाहिए था। (शकुंतला देवी सिंघल वि. गोवर्धन दास)...2641

उत्तराधिकार अधिनियम (1925 का 39), धाराएँ 213, 214 – प्रतिनिधिक स्वत्व का सबूत – उपबंध वाद संस्थित करने पर रोक नही लगाते – डिक्री प्राविधिक मानी जाएगी और वसीयत का प्रोबेट या उत्तराधिकार प्रमाणपत्र प्राप्त कर पेश करने पर प्रभाव में आयेगी – वादियों ने मृतक के विधिक प्रतिनिधियों के रूप में दावा किया और डिक्री पारित की गई – यह निदेशित किया गया कि वादियों के उत्तराधिकार प्रमाणपत्र प्राप्त कर लेने और पेश कर देने तक डिक्री को प्रभाव नही दिया जाएगा। (मानक चंद जैन वि. पुखराज बाई (श्रीमति)) ...2619

प्रतिभूति हित (प्रवर्तन) नियम, 2002, नियम 8 व 9(2) – देखें – वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन और प्रतिभूति हित प्रवर्तन अधिनियम, 2002, धाराएँ 4, 10, 12, 13 व 38 (गोदावरी श्रीधर (श्रीमति) वि. यूनियन ऑफ इंडिया) ...2918

Trade Marks Act (47 of 1999), Section 134 - See - *Civil Procedure Code, 1908, Section 20,* [Rasiklal Manikchand Dhariwal and Dhariwal Industries Ltd. v. M/s. M.S.S. Food Products] ...3225

Trade Marks Act (47 of 1999), Section 135 - *Suit for injunction and damages* - *Allegation of using phonetically similar mark and passing of product - Trade marks phonetically similar not seriously disputed - Ex parte decree based on large number of witnesses and exhibited documents - Offending label exploited on commercial scale in an area, the evidence with regard to actual sale is unnecessary and redundant - Held - Damages can not be awarded due to delay - Token damages awarded - However, order of injunction affirmed - Decree modified.* [Rasiklal Manikchand Dhariwal and Dhariwal Industries Ltd v. M/S. M.S.S. Food Products] ...3225

Transfer of Property Act (4 of 1882), Sections 3 & 123 - *Gift Deed - Attestation by two witnesses - Plaintiff seeking title on the basis of a gift deed which is although registered but not attested by two witnesses - Held - The gift deed is not attested by any of the attesting witnesses, hence, the said deed is not a legal gift deed and does not convey any title to the plaintiff.* [Ram Babu Vaishya (Since Dead) through L.Rs. Shrimati Nisha Rani v. Scindia Kanya Vidyalaya and Registered Society] ...3259

Transfer of Property Act (4 of 1882), Section 7 - *Persons competent to transfer - Transferor should be competent to transfer the property - If he did not have any right over the property, then he had no authority to transfer the same.* [Satyanarayan Agrawal v. State of M.P.] ...3178

Transfer of Property Act (4 of 1882), Section 53-A - Part performance - To attract provisions of Section 53-*A*, *the property must be owned by the plaintiff* - *There should be a written agreement to sell or transfer by the plaintiff in favour of defendant for consideration - In pursuance of that agreement, the defendant must have done something more in furtherance of the contract and he himself should be ready and willing to perform his part of the contract from the date of agreement - Appellant had failed to establish these ingredients, therefore, courts below rightly non-suited him.* [Amarsingh v. Shiv Narayan] ...3246

Transfer of Property Act (4 of 1882), Section 53-A - See - *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Sections 13 & 14* [Abhay Kumar v. Chief Manager, State Bank of Indore] ...2780

Transfer of Property Act (4 of 1882), Section 58(c) - *Mortgage - Execution of sale deed during minority of plaintiffs - Allegation of fraudulently execution of sale deed under the pretext of mortgage - On objection being raised, defendants executed separate agreement declaring that land has been mortgaged and after payment of consideration they will*

व्यापार चिह्न अधिनियम, (1999 का 47), धारा 134 – देखें – सिविल प्रक्रिया संहिता 1908, धारा 20, (रसिक लाल मानिक चंद धारीवाल एवं धारीवाल इंडस्ट्रीज लि. वि. में. एम.एस.एस. फूड प्रोडक्टस) ...3225

व्यापार चिह्न अधिनियम (1999 का 47), धारा 135 – व्यादेश और क्षतिपूर्ति के लिए वाद – ध्वन्यात्मक रूप से समान चिह्न का प्रयोग करने और उत्पाद के हस्तांतरण का अभिकथन – ध्वन्यात्मक रूप से समान व्यापार चिह्न गम्भीर रूप से विवादित नही किया गया – एकपक्षीय डिक्री साक्षियों की बड़ी संख्या और प्रदर्शित दस्तावेजों पर आधारित – उल्लंघनकारी लेबल का क्षेत्र में वाणिज्यक पैमाने पर शोषण किया गया, वास्तविक विक्रय से सम्बन्धित साक्ष्य अनावश्यक और व्यर्थ है – अभिनिर्धारित – विलम्ब के कारण क्षतिपूर्ति अधिनिर्णीत नही की जा सकती – नाममात्र की क्षतिपूर्ति अधिनिर्णीत की गई – तथापि व्यादेश के आदेश की पुष्टि की गई – डिक्री उपांतरित। (रसिक लाल मानिक चंद धारीवाल एवं धारीवाल इंडस्ट्रीज लि. वि. में. एम.एस.एस. फूड प्रोडक्टस) ...3225

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धाराएँ 3 व 123, – दान विलेख – दो साक्षियों द्वारा अनुप्रमाणन – वादी ने दान विलेख के आधार पर स्वत्व की मांग की जो यद्यपि रजिस्टर्ड है किन्तु दो साक्षियों द्वारा अनुप्रमाणित नही – अभिनिर्धारित – दान विलेख किसी भी साक्षी द्वारा अनुप्रमाणित नही है, इसलिए उक्त विलेख वैध दान विलेख नही है और वादी को कोई स्वत्व हस्तांतरित नही करता है। (रामबाबू वैश्य (मृतक) द्वारा विधिक प्रतिनिधि श्रीमति निशा रानी वि. सिंधिया कन्या विद्यालय एंड रजिस्टर्ड सोसायटी) ...3259

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 7 – अंतरण के लिए सक्षम व्यक्ति – अंतरणकर्ता को सम्पत्ति अंतरित करने के लिए सक्षम होना चाहिए – यदि वह सम्पत्ति पर कोई अधिकार नही रखता था तब उसे सम्पत्ति अंतरित करने का कोई प्राधिकार नही था। (सत्यनारायण अग्रवाल वि. म.प्र. राज्य) ...3178

सम्पत्ति अंतरण अधिनियम (1882 का 4), धारा 53–ए – भागिक पालन – धारा 53–ए के उपबंधों को आकृष्ट करने के लिए सम्पत्ति वादी के स्वामित्व की होना चाहिए – वादी द्वारा प्रतिवादी के हित में प्रतिफल के लिए लिखित विक्रय या अन्तरण अनुबंध होना चाहिए – अनुबन्ध के अनुसरण में प्रतिवादी को संविदा के अग्रसरण में कुछ अधिक करना चाहिए और वह स्वयं अनुबंध की तारीख से संविदा के अपने भाग का पालन करने के लिए तैयार और रजामंद होना चाहिए – अपीलार्थी इन अवयवों को स्थापित करने में असफल हो गया था, इसलिए अधीनस्थ न्यायालयों ने सही रूप से उसका वाद समाप्त कर दिया। (अमरसिंह वि. शिवनारायण) ...3246

सम्पत्ति अंतरण अधिनियम (1882 का 4), धारा 53–ए – देखें – वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन और प्रतिभूति हित प्रवर्तन अधिनियम, 2002, धारा 13 व 14 (अभय कुमार वि. चीफ मैनेजर, स्टेट बैंक ऑफ इंदौर) ...2780

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 58(सी) – बंधक – वादियों की अवयस्कता के दौरान विक्रयपत्र का निष्पादन – बंधक के बहाने कपटपूर्वक विक्रयपत्र के निष्पादन का अभिकथन – आपत्ति करने पर प्रतिवादियों ने यह घोषित करते हुए पृथक अनुबंध पत्र निष्पादित किया कि भूमि बंधक की गई है और प्रतिफल का संदाय करने के बाद वे कब्जा सौंप देंगे – दोनों

handover the possession - The two courts below found the sale deed void as it was intended to create security for loan transaction - Second appeal - Held - There is no evidence on record that subsequent agreement was based on fraud - Consideration of both documents together would constitute mortgage - Considering of price of land and minority of plaintiffs the sale deed is a sham transaction created as security of loan transaction. [Gendalal (Since Dead) through L.Rs. Sajjan Bai etc. v. Pannalal (Since Dead) through L.Rs. Lila Bai etc.] ...3207

Transfer of Property Act (4 of 1882), Section 123 - *Attestation of gift deed by two witnesses - Mandatory - It is true that no penalty is imposed for non-compliance of the condition of attestation of two witnesses on the gift deed - But in the absence of this condition, the gift deed itself cannot be said to be legally complete and does not convey any title in favour of the donee - When the law requires that a particular thing is to be done in a particular manner, then the same has to be done in the manner provided by law else the act is illegal - Therefore, consequence of absence of two attesting witnesses cannot be said to be directory but it is mandatory in nature.* [Ram Babu Vaishya (Since Dead) through L.Rs. Shrimati Nisha Rani v. Scindia Kanya Vidyalaya and Registered Society] ...3259

Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P., 2005 (14 of 2006), Section 2 - *Dealership of petrol - Order of cancellation of dealership on ground that High Tension Electric Line passes over the site - Advertisement does not contain such disqualification - Learned Single Judge, on finding that dealer proposed to shift line and make the site suitable, directed in case the line stands removed, the order of cancellation of dealership shall stand quashed - Pursuant to direction of learned Single Judge line shifted - Appeal against the order - Held - Policy circular No.63 contains condition for such disqualification - Policy circular being strictly confidential, knowledge of it can not be imputed to dealer - There is no suppression of fact by the dealer - The learned Single Judge ought not to have directed grant of dealership merely on account of removal of line - Since present position of policy not placed on record - Appeal partly allowed with the direction that appellant company shall, in changed circumstances, consider the suitability of respondent for allotment of dealership.* [Indian Oil Corporation Ltd. v. Gurmeet Singh] ...2505

Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P., 2005 (14 of 2006), Section 2 - *Maintainability of Writ Appeal - Order passed by learned Single Judge in exercise of its contempt jurisdiction - Held - Proviso to Section 2(1) puts bar and ban against filing of appeal against any order except order passed by learned Single Judge in exercise of original jurisdiction under Article 226 of Constitution - Writ Appeal not maintainable.* [Sulochana Mallaiya (Smt.) v. S.N. Shrivastava] ...2205

अधीनस्थ न्यायालयों ने विक्रयपत्र शून्य पाया क्योंकि उसका आशय ऋण संव्यवहार के लिए प्रतिभूति सृष्ट करना था -- द्वितीय अपील – अभिनिर्धारित – अभिलेख पर कोई साक्ष्य नही कि पश्चात्वर्ती अनुबन्ध कपट पर आधारित था – दोनों दस्तावेजों पर एक साथ विचार बंधक गठित करेगा – भूमि का प्रतिफल और वादियों की अवयस्कता पर विचार करने पर विक्रयपत्र नाममात्र का संव्यवहार है जो ऋण संव्यवहार की प्रतिभूति के रूप में सृष्ट किया गया था। (गेंदालाल (मृतक) द्वारा विधिक प्रतिनिधि सज्जन बाई आदि वि. पन्ना लाल (मृतक) द्वारा विधिक प्रतिनिधि लीला बाई आदि)...3207

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 123 – दो साक्षियों द्वारा दान विलेख का अनुप्रमाणन – आज्ञापक – यह सत्य है कि दान विलेख पर दो साक्षियों के अनुप्रमाणन की शर्त के अपालन के लिए कोई शास्ती अधिरोपित नही की जाती – किन्तु इस शर्त के अभाव में, दान विलेख विधिक रूप से पूर्ण होना नही कहा जा सकता और आदाता के पक्ष में कोई स्वत्व हस्तांतरित नही करता -- जब विधि की यह अपेक्षा है कि कोई विशिष्ट कार्य किसी विशिष्ट रीति से किया जाए तो वह विधि द्वारा उपबंधित रीति से ही किया जाना चाहिए अन्यथा कार्य अवैध है – इसलिए दो अनुमाणक साक्षियों के अभाव का परिणाम निदेशात्मक नही कहा जा सकता बल्कि उसकी प्र.ति आज्ञापक है। (रामबाबू वैश्य (मृतक) द्वारा विधिक प्रतिनिधि श्रीमति निशा रानी वि. सिंधिया कन्या विद्यालय एंड रजिस्टर्ड सोसायटी) ...3259

उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005 (2006 का 14), धारा 2 – पेट्रोल की डीलरशिप – डीलरशिप के रद्दकरण का आदेश इस आधार पर कि स्थल के ऊपर से उच्च वोल्टता की विद्युत लाइन गयी है – विज्ञापन में ऐसी अनर्हता अन्तर्विष्ट नही – विद्वान एकल न्यायाधीश ने, यह पाने पर कि डीलर ने लाइन हटाना और स्थल को उपयुक्त बनाना प्रस्तावित किया, निदेश दिया कि लाइन हटा देने की दशा में डीलरशिप रद्द करने का आदेश अभिखण्डित हो जायेगा – विद्वान एकल न्यायाधीश के निदेश के अनुसरण में लाइन हटायी गई – आदेश के विरुद्ध अपील – अभिनिर्धारित – पॉलिसी परिपत्र क्रमांक 63 में ऐसी अनर्हता की शर्त अन्तर्विष्ट है – पॉलिसी परिपत्र सर्वथा गोपनीय होने से, इसकी जानकारी डीलर पर अभ्यारोपित नही की जा सकती है – डीलर द्वारा कुछ नही छिपाया गया – केवल लाइन के हटाये जाने के कारण विद्वान एकल न्यायाधीश को डीलरशिप देने का निदेश नही देना चाहिए था – चूंकि पॉलिसी की वर्तमान स्थिति अभिलेख पर नही रखी गई – अपील अंशतः इस निदेश के साथ मंजूर की गई कि अपीलार्थी कम्पनी, बदली हुई परिस्थितियों में, डीलरशिप आबंटित करने के लिए प्रत्यर्थी की उपयुक्तता पर विचार करे। (इंडियन आइल कारपोरेशन लि. वि. गुरमीत सिंह) ...2505

उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005 (2006 का 14), धारा 2 – रिट अपील की पोषणीयता – विद्वान एकल न्यायाधीश द्वारा अपनी अवमान अधिकारिता के प्रयोग में आदेश पारित – अभिनिर्धारित – धारा 2(1) का परन्तुक, विद्वान एकल न्यायाधीश द्वारा संविधान के अनुच्छेद 226 के अधीन आरंभिक अधिकारिता के प्रयोग में पारित आदेश के अलावा किसी आदेश के विरुद्ध, अपील के पेश करने के विरुद्ध रोक और पाबंदी लगाता है – रिट याचिका पोषणीय नहीं। (सुलोचना मलैया (श्रीमति) वि. एस.एन. श्रीवास्तव) ...2205

Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P., 2005 (14 of 2006), Section 2(1), Industrial Disputes Act, 1947, Section 10 - ***Incentive Bonus*** - *By scheme dated 01.09.77 not provided to employees working in Dispensary, Hospital, Estate, Office Staff and Canteen - Subsequently, on 01.07.82 aforesaid workers were granted 25% incentive bonus - Further, by circular dated 01.11.86 Canteen employees were granted 100% incentive bonus - The learned Single Judge found that there is no rationale to give different treatment and different percentage of incentive bonus to employees working in Canteen and Dispensary - Held - No perversity in the order - However, order of learned Single Judge granting interest on incentive bonus from 01.11.86 and not from initial date of scheme modified on ground of financial burden on employer and interest curtailed to 6% p.a. for period of 3 years.* [General Manager, Bank Note Press, Dewas v. Bank Note Press Office Staff Association, Dewas] ...2218

Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P., 2005 (14 of 2006), Section 2(1) Proviso - ***Maintainability of Writ Appeal*** - *It has to be decided on the basis of pleadings whether impugned order passed by Single Judge is one under Article 226 or 227 of Constitution.* [Ispat Khadan Janta Mazdoor Union v. Steel Authority of India Ltd.] ...2508

Uchchatar Nyayik Sewa (Bharti Tatha Sewa Sharten) Niyam, 1994, Rule 5(1) Second Proviso, Constitution, Articles 14, 16, 233, 235 - *Recruitment to post of District Judge (Entry Level) - Rule 5(1) Second Proviso provides that recruitment to posts of District Judges (Entry Level) shall be made on the basis of vacancies available till attainment of required percentage - Held - Proviso prevents High Court and Governor to fill up all vacancies arising from year to year is contrary to provisions of Articles 233 & 235 - Right to equality and equal opportunity in matters of public employment guaranteed under Articles 14 & 16 is affected - Proviso in question is ultra vires Articles 14, 16, 233 and 235 of Constitution.* [Y.D. Shukla v. High Court of Judicature of M.P. at Jabalpur] ...2577

Urban Land (Ceiling and Regulation) Act (33 of 1976), Sections 2(f), 4(b) & 6 - ***Filing of return on behalf of family - Land held by plaintiff and her husband as 'joint holder' as per Section 4(b) - Plaintiff's husband filed the return on behalf of 'family' as defined in Section 2(f) - 5.62 acres of land declared surplus by Competent Authority - Plaintiff herself did not file return as an individual holder as per Section 6 - Held*** - *No separate notice by Competent Authority under Act was necessary to the plaintiff - Appeal dismissed.* [Kamla Bai (Smt.) v. State of M.P.] ...2925

Urban Land (Ceiling and Regulation) Act (33 of 1976), Section 10(3), Rule 5(2)(c) - ***Possession*** - *Possession taken from a dead person is no possession in eye of law - Paper possession without notice to holder is also no possession and cannot be affirmed or maintained.* [Sohan Singh v. State of M.P.] ...2184

उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005 (2006 का 14), धारा 2(1), औद्योगिक विवाद अधिनियम, 1947, धारा 10 — प्रोत्साहन बोनस — स्कीम दिनांकित 01.09.77 द्वारा डिस्पेंसरी, अस्पताल, सम्पदा, कार्यालयीन स्टाफ एवं केंटीन में कार्यरत कर्मचारियों को नहीं दिया गया — तत्पश्चात् 01.07.82 को पूर्वोक्त कर्मकारों को 25 प्रतिशत प्रोत्साहन बोनस दिया गया — आगे परिपत्र दिनांकित 01.11.86 द्वारा केंटीन कर्मचारियों को 100 प्रतिशत प्रोत्साहन बोनस दिया गया — विद्वान एकल न्यायाधीश ने पाया कि केंटीन और डिस्पेंसरी में कार्यरत कर्मचारियों को प्रोत्साहन बोनस का भिन्न बरताव और भिन्न प्रतिशतता देने का कोई तर्काधार नहीं है — अभिनिर्धारित — आदेश में कोई विपर्यस्तता नहीं — तथापि विद्वान एकल न्यायाधीश का प्रोत्साहन बोनस पर 01.11.86 से न कि स्कीम के आरम्भ की तारीख से ब्याज देने का आदेश नियोक्ता पर वित्तीय भार के आधार पर परिवर्तित और ब्याज तीन वर्षों के लिए 6 प्रतिशत प्रतिवर्ष तक घटाया गया। (जनरल मेनेजर, बैंक नोट प्रेस, देवास वि. बैंक नोट प्रेस आफिस स्टाफ एसोसिएशन, देवास) ...2218

उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005 (2006 का 14), धारा 2(1) परन्तुक — रिट अपील की पोषणीयता — अभिवचनों के आधार पर यह विनिश्चत करना पड़ता है कि क्या एकल न्यायाधीश द्वारा पारित विवादित आदेश संविधान के अनुच्छेद 226 के अन्तर्गत है या 227 के। (इस्पात खदान जनता मज़दूर यूनियन वि. स्टील अथॉरिटी ऑफ इंडिया) ...2508

उच्चतर न्यायिक सेवा (भर्ती तथा सेवा शर्तें) नियम, 1994, नियम 5(1) द्वितीय परन्तुक, संविधान, अनुच्छेद 14, 16, 233, 235 — जिला न्यायाधीश (प्रवेश स्तर) के पद पर भर्ती — नियम 5(1) द्वितीय परन्तुक उपबंधित करता है कि जिला न्यायाधीशों (प्रवेश स्तर) के पद की भर्ती अपेक्षित प्रतिशतता की प्राप्ति तक उपलब्ध रिक्तियों के आधार पर की जाएगी — अभिनिर्धारित — परन्तुक उच्च न्यायालय एवं राज्यपाल को वर्षानुवर्ष उद्भूत सभी रिक्तियों को भरने से रोकता है, अनुच्छेद 233 व 235 के उपबंधों के प्रतिकूल है — अनुच्छेद 14 व 16 के अन्तर्गत प्रत्याभूत समानता का अधिकार और सरकारी नौकरी के मामलों में समान अवसर प्रभावित होता है — प्रश्नगत परन्तुक संविधान के अनुच्छेद 14, 16, 233 एवं 235 के अधिकारातीत है। (वाय.डी. शुक्ला वि. हाई कोर्ट ऑफ जूडिकेचर ऑफ एम.पी. एट जबलपुर) ...2577

नगर भूमि (अधिकतम सीमा और विनियमन) अधिनियम (1976 का 33), धाराएँ 2(एफ), 4(बी) व 6 — परिवार की ओर से विवरणी पेश करना — भूमि वादी और उसके पति द्वारा धारा 4(बी) के अनुसार 'संयुक्त धारक' के रूप में धारित — वादी के पति ने धारा 2(एफ) में परिभाषित 'परिवार' की ओर से विवरणी पेश की — सक्षम प्राधिकारी द्वारा 5.62 एकड़ भूमि अधिशेष घोषित की गई — स्वयं वादी ने धारा 6 के अनुसार वैयक्तिक धारक के रूप में विवरणी पेश नही की — अभिनिर्धारित — सक्षम प्राधिकारी द्वारा वादी को अधिनियम के अन्तर्गत कोई पृथक सूचनापत्र देना आवश्यक नही था — अपील खारिज। (कमला बाई (श्रीमति) वि. म.प्र. राज्य)...2925

नगर भूमि (अधिकतम सीमा और विनियमन) अधिनियम (1976 का 33), धारा 10(3), नियम 5(2)(सी) — कब्जा — किसी मृत व्यक्ति से लिया गया कब्जा विधि की दृष्टि में कोई कब्जा नही है — धारक को सूचना के बिना दस्तावेजी कब्जा भी कोई कब्जा नही है और अभिपुष्ट एवं कायम नही रखा जा सकता। (सोहन सिंह वि. म.प्र. राज्य) ...2184

Urban Land (Ceiling and Regulation) Act (33 of 1976), Section 10(3), Rule 5(2)(c) - See - *Constitution, Article 226* [Sohan Singh v. State of M.P.] ...2184

Urban Land (Ceiling and Regulation) Act (33 of 1976), Section 10(5), (6) - *Delivery of Possession* - *Land belonging to appellant declared surplus - Notice u/s 10(5) issued to appellant which was refused - Possession of land taken over by Revenue Officer and name of State recorded in revenue record - Held - Procedure of preparing a Panchnama or memorandum by L.A.O. in presence of witnesses would constitute taking of possession - Revenue records showing party in possession of land coupled with revenue entries is sufficient compliance - Court cannot convert itself into a Revenue Court and hold that inspite of panchnama and revenue record actual physical possession of land not taken - Appeal dismissed.* [Lalji Choubey v. State of M.P.] ...2513

Urban Land (Ceiling and Regulation) Act (33 of 1976), Sections 10(5), (6) & 11 - *Possession* - *After serving notice possession was taken by State from husband of plaintiff - Possession receipt mentioning that possession has been taken from husband of plaintiff - In the revenue papers entry of State of M.P., Nazul Department was made - Notice u/s 11 was also issued to husband of plaintiff to collect compensation - In these circumstances, on the date of suit plaintiff remained in possession cannot be accepted - Appeal dismissed.* [Kamla Bai (Smt.) v. State of M.P.] ...2925

Urban Land (Ceiling and Regulation) Repeal Act (15 of 1999) - *Effect on concluded proceedings* - *Since possession was already taken by the State - Land has vested in the State - The proceedings have been concluded - Possession had been obtained after issuance of due notification - Proceedings could not be reopened - No benefit of Repeal Act could be obtained by the plaintiff.* [Kamla Bai (Smt.) v. State of M.P.] ...2925

Van Upaj Vyapar (Viniyaman) Adhiniyam, M.P. (9 of 1969), Sections 5(1) & 15 - Confiscation - Benefit of Section 15(6) - *The petitioner's tractor trolley was confiscated for transporting teakwood without permit - The petitioner sought the benefit of Section 15(6) that it was not in her knowledge that teakwood without permit was being transported - Held - To claim the benefit of Section 15(6), the petitioner is not only required to establish that she had no knowledge but she is also required to establish that her servant or agent also did not have any knowledge and they had not connived and she had taken all reasonable and necessary precautions against the use of vehicle against the commission of such offence - Petition dismissed.* [Rakhiya Bai v. Conservator of Forest] ...3112

Words & Phrase :

All consequential benefits - *Learned Single Judge has directed to settle all consequential benefits - The term used in this direction are quite different than issuing a mandamus or a command to pay arrears - Order is not curtailment of power of employer.* [M.P. State Civil Supplies Corporation Ltd. v. Vinod Kumar Save] ...2213

नगर भूमि (अधिकतम सीमा और विनियमन) अधिनियम (1976 का 33), धारा 10(3), नियम 5(2)(सी) – देखें – संविधान, अनुच्छेद 226 (सोहन सिंह वि. म.प्र. राज्य)...2184

नगर भूमि (अधिकतम सीमा और विनियमन) अधिनियम (1976 का 33), धारा 10(5), (6) – कब्जे का परिदान – अपीलार्थी की भूमि अतिशेष घोषित की गई – अपीलार्थी को धारा 10(5) के अन्तर्गत सूचनापत्र जारी किया गया जो लेने से इंकार किया गया – राजस्व अधिकारी द्वारा भूमि का कब्जा ले लिया गया और राजस्व अभिलेख में राज्य का नाम अभिलिखित किया गया – अभिनिर्धारित – भू अर्जन अधिकारी द्वारा साक्षियों की उपस्थिति में पंचनामा या ज्ञापन तैयार करने की प्रक्रिया कब्जे का लिया जाना गठित करेगी – पक्षकार को भूमि के कब्जे में दिखाने वाला राजस्व प्रविष्टियों से युक्त राजस्व अभिलेख पर्याप्त अनुपालन है – न्यायालय स्वयं राजस्व न्यायालय में परिवर्तित नही हो सकता और यह अभिनिर्धारित नही कर सकता कि पंचनामा और राजस्व अभिलेख के बावजूद भूमि का वास्तविक भौतिक कब्जा नही लिया गया – अपील खारिज। (लालजी चौबे वि. म.प्र. राज्य) ...2513

नगर भूमि (अधिकतम सीमा और विनियमन) अधिनियम (1976 का 33), धाराएँ 10(5), (6) व 11 – कब्जा – राज्य द्वारा सूचनापत्र तामील करने के बाद वादी के पति से कब्जा लिया गया – कब्जा रसीद उल्लेखित करती है कि वादी के पति से कब्जा लिया गया है – राजस्व कागजातों में म.प्र. राज्य, नजूल विभाग की प्रविष्टि की गई – वादी के पति को प्रतिकर प्राप्त करने के लिए धारा 11 के अन्तर्गत सूचनापत्र भी जारी किया गया – इन परिस्थितियों में वाद की तारीख पर वादी कब्जे में थी, स्वीकार नही किया जा सकता – अपील खारिज। (कमला बाई (श्रीमति) वि. म.प्र. राज्य) ...2925

नगर भूमि (अधिकतम सीमा और विनियमन) निरसन अधिनियम (1999 का 15) – समाप्त कार्यवाहियों पर प्रभाव – चूंकि राज्य द्वारा कब्जा पहले ही ले लिया गया – भूमि राज्य में निहित हो गयी – कार्यवाहियाँ समाप्त हो गयीं – सम्यक अधिसूचना जारी करने के बाद कब्जा प्राप्त किया गया था – कार्यवाहियाँ पुनर्जीवित नही की जा सकतीं – वादी द्वारा निरसित अधिनियम का कोई लाभ प्राप्त नही किया जा सकता। (कमला बाई (श्रीमति) वि. म.प्र. राज्य) ...2925

वन उपज व्यापार (विनियमन) अधिनियम, म.प्र. (1969 का 9), धाराएँ 5(1) व 15 – अधिहरण – धारा 15(6) का लाभ – याची के ट्रेक्टर ट्रॉली का अधिहरण बिना अनुज्ञापत्र सागौन की लकड़ी का परिवहन करने के लिए किया गया – याची ने धारा 15(6) का लाभ चाहा कि यह उसकी जानकारी में नही था कि सागौन की लकड़ी का बिना अनुज्ञापत्र परिवहन किया जा रहा था – अभिनिर्धारित – धारा 15(6) के लाभ का दावा करने के लिए याची को न केवल यह स्थापित करना आवश्यक है कि उसे कोई जानकारी नही थी बल्कि उसे यह भी स्थापित करना आवश्यक है कि उसके नौकर या अभिकर्ता को भी कोई जानकारी नही थी और उन्होंने मौनानुमति नही दी थी और उसने ऐसा अपराध किये जाने के लिए वाहन का उपयोग किये जाने के विरुद्ध सभी युक्तियुक्त और आवश्यक पूर्वावधानियाँ बरतीं – याचिका खारिज। (रखिया बाई वि. कंजरवेटर ऑफ फॉरेस्ट) ...3112

शब्द और वाक्यांश

समस्त पारिणामिक लाभ – विद्वान एकल न्यायाधीश ने समस्त पारिणामिक लाभ निपटाने का निदेश दिया – इस निदेश में प्रयुक्त शब्द परमादेश जारी करने या बकाया भुगतान करने का आदेश देने से बिल्कुल भिन्न है – आदेश नियोक्ता की शक्ति को न्यून नही करता है। (म.प्र. स्टेट सिविल सप्लाईस् कारपोरेशन लि. वि. विनोद कुमार सावे) ...2213

'Arbitrator' & 'Conciliator' - ***Distinguished*** - *The arbitrator acts as an arbitrator and not as a conciliator - Arbitrator cannot ignore the law or misapply it in order to do what he thinks just and reasonable -The arbitrator acts as a tribunal and decides the matter in accordance with law and according to the 'legal rights' of the parties.* [Managing Director M.P. State Mining Corporation Ltd. v. M/s. Narmada Enterprises] ...2956

Context - *Extension of rule of context permits reference to other statutes in pari materia.* [Devi Prasad Singh v. State of M.P.] ...2189

Word 'may' - Interpreted - Rules 8 & 9 of the Security Interest (Enforcement) Rules, 2002 - *The word 'may' cannot be construed as mandatory because the Act has been enacted to facilitate recovery of loan by financial institutions.* [Godawari Shridhar (Smt.) v. Union Bank of India] ...2918

Workmen's Compensation Act (8 of 1923), Section 30, Motor Vehicles Act, 1988, Sections 140, 143 & 167 - *Question whether the claim petition is maintainable under the Workmen's Compensation Act after the dismissal of claim petition in miscellaneous appeal - Held - Section 143 of the Motor Vehicle Act itself provides that provision of this Act shall also apply in relation to any claim for compensation in respect of death or permanant disablement of any person under Workmen's Compensation Act resulting from an accident of the nature referred to in sub-section (1) of Section 140 - Appeal Allowed.* [Rajani Agrawal (Smt.) v. Ramswaroop]...2384

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'मध्यस्थ' और 'सुलहकर्ता' – सुभिन्न – मध्यस्थ, मध्यस्थ के रूप में कार्य करता है न कि सुलहकर्ता के रूप में – मध्यस्थ, जो वह उचित और तर्कसंगत समझता है, करने के लिए विधि की उपेक्षा या विधि का दुष्प्रयोग नही कर सकता – मध्यस्थ अधिकरण के रूप में कार्य करता है और मामले का विनिश्चय विधि और पक्षकारों के 'विधिक अधिकारों' के अनुसार करता है। (मेनेजिंग डायरेक्टर एम.पी. स्टेट माइनिंग कारपोरेशन लि. वि. नर्मदा इंटरप्राइजेस) ...2956

संदर्भ – संदर्भ के नियम का विस्तार समविषय में (in pari materia) अन्य संविधियों के प्रति संदर्भ की अनुमति देता है। (देवी प्रसाद सिंह वि. म.प्र. राज्य) ...2189

शब्द **'may'** - निर्वचन – प्रतिभूति हित (प्रवर्तन) नियम, 2002 के नियम 8 व 9 – शब्द 'may' का आज्ञापक के रूप में अर्थ नही लगाया जा सकता क्योंकि अधिनियम वित्तीय संस्थानों द्वारा ऋण की वसूली को सुकर बनाने के लिए अधिनियमित किया गया है। (गोदावरी श्रीधर (श्रीमति) वि. यूनियन ऑफ इंडिया) ...2918

कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 30, मोटर यान अधिनियम, 1988, धाराएँ 140, 143, 167 – प्रश्न, क्या विविध अपील में दावा याचिका के खारिज होने के बाद कर्मकार प्रतिकर अधिनियम के अन्तर्गत दावा याचिका पोषणीय है – अभिनिर्धारित – मोटर यान अधिनियम की धारा 143 स्वयं उपबंधित करती है कि इस अधिनियम के उपबंध धारा 140 की उपधारा (1) में उल्लिखित प्रकृति की दुर्घटना के परिणामस्वरूप हुई किसी व्यक्ति की मृत्यु या स्थायी निःशक्तता के बाबत् प्रतिकर के लिए कर्मकार प्रतिकर अधिनियम के अन्तर्गत किसी दावे के संबंध में भी लागू होंगे – याचिका मंजूर। (रजनी अग्रवाल (श्रीमति) वि. रामस्वरूप) ...2384

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S.R. Waghmare, J.

ANTAR SINGH
Vs.
STATE OF M.P. & anr.

Criminal Procedure Code, 1973 (2 of 1974), Section 433, Prevention of Food Adulteration Act, 1954, Sections 7(1) & 16(1)(a)(i) - *Sale of adulterated milk - Variance in report of Public Analyst and Central Laboratory - Both reports analyzed sample of milk adulterated - Samples were duly obtained after stirring, measured and properly sealed - Held - Conviction for offence is in accordance with law - Looking to the young age of accused and the minimum Jail sentence of six months imposed by court below - It is directed that on depositing the enhanced fine Rs.10,000 within 6 weeks the State Government may formalize the matter by passing an appropriate order u/s 433(d) of the Code.* (2006) 13 SCC 290, 2007 CrLJ 3733, (1997) 9 SCC 101, (2000) 9 SCC 155 (ref.)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 433, खाद्य अपमिश्रण निवारण अधिनियम, 1954, धाराएँ 7(1) व 16(1)(ए)**(i)** – अपमिश्रित दूध का विक्रय – लोक विश्लेषक और केन्द्रीय प्रयोगशाला की रिपोर्ट में भिन्नता – दोनों रिपोर्टों में दूध के नमूने का विश्लेषण कर अपमिश्रित पाया – नमूने हिलाने के बाद, नापकर और उचित रूप से सील करके सम्यक् रूप से लिये गये – अभिनिर्धारित – अपराध के लिये दोषसिद्धि विधि के अनुसार है – अभियुक्त की युवावस्था और अधीनस्थ न्यायालय द्वारा आधिरोपित छः माह के न्यूनतम जेल दण्डादेश को देखते हुए – यह निदेशित किया जाता है कि बढ़ा हुआ जुर्माना 10,000 रुपये 6 सप्ताह में जमा करने पर राज्य सरकार संहिता की धारा 433(डी) के अन्तर्गत मामले में समुचित आदेश पारित करे। (2006) 13 SCC 290, 2007 CrLJ 3733, (1997) 9 SCC 101, (2000) 9 SCC 155 (संदर्भित).

Anand Soni, for the applicant.

G.S. Chouhan, Dy.G.A., for the non-applicants.

***Cr.R. No.313/2005 (Indore), D/- 17 September, 2008.**

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(92)

S.L. Kochar, J

GOPAL
Vs.
STATE OF M.P.

Narcotics Drugs and Psychotropic Substances Act (61 of 1985), Sections 2(vii)(a), 8/18(b) & 8/18(c) - ***Whether 2.5 Kg opium will come within commercial quantity or non-commercial quantity*** *- 2.5 Kg of opium seized from the possession of appellant - Trial court has not pointed out specifically whether the appellant is convicted for commercial quantity or non-commercial quantity - However, awarded Jail sentence of 10 years and fine of Rs. 1 lac - Conviction and sentence challenged before High Court - Held - As per definition u/s 2(vii)(a) 'commercial quantity' means any quantity greater than the quantity specified by the Central Government by notification - In the notification commercial quantity of opium is mentioned in item No.92 as 2.5 Kg - If more than this quantity would have been seized from the possession of the appellant, the appellant would be responsible for punishment for commercial quantity u/s 8/18(b) of the Act - Since 2.5 Kg opium has been seized from the appellant, therefore, his case would fall under non-commercial quantity which is punishable u/s 8/18(c) of the Act - U/s 8/18(c) minimum Jail sentence is not prescribed - Looking to the facts of the case, Jail sentence reduced to 7 years from 10 years.*

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 2(**vii**)(ए), 8/18(बी) व 8/18(सी) – क्या 2.5 किग्रा अफीम वाणिज्यिक मात्रा के अन्तर्गत आयेगी या गैर–वाणिज्यिक मात्रा के – अपीलार्थी के कब्जे से 2.5 किग्रा अफीम अभिग्रहीत की गई – विचारण न्यायालय ने विनिर्दिष्ट रूप से नही बताया कि अपीलार्थी को वाणिज्यिक मात्रा के लिए दण्डित किया गया है या गैर–वाणिज्यिक मात्रा के लिए – तथापि 10 वर्ष का जेल दण्डादेश और 1 लाख रुपये जुर्माना अधिनिर्णीत किया – दोषसिद्धि और दण्डादेश को उच्च न्यायालय के समक्ष चुनौती दी गई – अभिनिर्धारित – धारा 2(vii)(ए) के अनुसार 'वाणिज्यिक मात्रा' का अर्थ केन्द्र सरकार द्वारा अधिसूचना द्वारा विनिर्दिष्ट मात्रा से अधिक मात्रा से है – अधिसूचना में अफीम की वाणिज्यिक मात्रा आइटम नं. 92 में 2.5 किग्रा दी गई है – यदि इस मात्रा से अधिक अपीलार्थी के कब्जे से अभिग्रहीत की जाती, तो अपीलार्थी अधिनियम की धारा 8/18(बी) के अन्तर्गत वाणिज्यिक मात्रा के लिए दण्ड के लिए दायी होता – चूंकि अपीलार्थी के कब्जे से 2.5 किग्रा अफीम अभिग्रहीत की गई, इसलिए उसका मामला गैर–वाणिज्यिक मात्रा के अन्तर्गत आयेगा जो अधिनियम की धारा 8/18(सी) के अन्तर्गत दण्डनीय है – धारा 8/18(सी) के अन्तर्गत न्यूनतम जेल दण्डादेश विहित नही है – मामले के तथ्यों को देखते हुए जेल दण्डादेश 10 वर्ष से घटाकर 7 वर्ष किया गया।

Vivek Singh, for the appellant.

R.S. Chouhan, Dy.G.A., for the respondent/State.

***Cr.A. No.333/2007 (Indore), D/- 14 July, 2008.**

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(93)

N.K. Mody, J

KAMLABAI & ors.
Vs.
KAMLESH & ors.

Motor Vehicles Act (59 of 1988), Section 147 - *Liability of Insurance Company - Deceased travelling in a tractor which was insured under farmer package policy - Insurance Company not liable for payment of compensation - Amount if any paid by Insurance Company shall not be recovered from claimants but shall be recovered from insured and driver.* AIR 2007 SC 1334, (2008) 1 SCC 423, AIR 1988 SC 719, 2005 ACJ 1520 (ref.)

मोटर यान अधिनियम (1988 का 59), धारा 147 – बीमा कम्पनी का दायित्व – मृतक ट्रेक्टर में यात्रा कर रहा था जो किसान पैकेज पॉलिसी के अन्तर्गत बीमा.त था – बीमा कम्पनी प्रतिकर के संदाय के लिए दायी नही – बीमा कम्पनी ने यदि कोई राशि प्रदत्त की हो, दावेदारों से वसूल नही की जाएगी बल्कि पॉलिसी धारक या चालक से वसूली की जाएगी। AIR 2007 SC 1334, (2008) 1 SCC 423, AIR 1988 SC 719, 2005 ACJ 1520 (संदर्भित)

Sameer Aathawale, for the appellants.
Vinita Phaye, for the respondent Nos.1, 3 & 4.
V.P. Khare, for the respondent No.5.

***M.A. No.3487/2006 (Indore), D/- 23 April, 2008.**

I.L.R. [2008] M. P., 3059

SUPREME COURT OF INDIA

Before Mr. Justice A.K. Mathur & Mr. Justice Markandey Katju

10 January, 2008*

SHIV NATH PRASAD ... Appellant

Vs.

SARAN PAL JEET SINGH TULSI & ors. ... Respondents

Constitution, Article 16(4A) [77th and 85th Amendment], Public Services (Promotion) Rules, M.P. 2002, Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhada Vargon Ke Liye Arakshan) Ahiniyam, M.P. 1994 - *Appellant appointed as A.E. in P.W.D. - Private respondents were senior to appellant - Appellant granted promotion in the year 1980 to the post of E.E. against post reserved for Scheduled Caste - Respondents promoted in the year 1985 to the post of E.E. as posts in General category were not available at the time of promotion of appellant - Tribunal directed for placing General promotees above as seniority was to be counted on the basis of feeder cadre - Held - The 85th amendment in Article 16(4A) came into force w.e.f. 17.06.1995 - State Govt. framed Rules 2002 enabling benefit to SC/ST candidates who got promotion against reserved post - Rules 2002 came into force in the year 2002 whereas issue triggered in the year 1985 and Rules were not in force - Neither 77th nor 85th amendment has been made applicable from the year 1985 - As per circular of 1975 appellant was only entitled for accelerated promotion but not seniority - Appellant not entitled for seniority on the basis of his promotion against reserved post - Appeal dismissed.* (Para 9)

संविधान, अनुच्छेद 16(4ए) [77वां और 85वां संशोधन], लोक सेवा (पदोन्नति) नियम, म.प्र. 2002, लोक सेवा (अनुसूचित जाति, अनुसूचित जनजाति और अन्य पिछड़ा वर्गों के लिये आरक्षण) अधिनियम, म.प्र. 1994 – अपीलार्थी पी.डब्ल्यू.डी. में सहायक यंत्री के रूप में नियुक्त किया गया – गैरसरकारी प्रत्यर्थी अपीलार्थी से वरिष्ठ थे – अपीलार्थी को वर्ष 1980 में अनुसूचित जाति के लिए आरक्षित पद के विरुद्ध कार्यपालक यंत्री के पद पर पदोन्नति प्रदान की गयी – प्रत्यर्थियों को वर्ष 1985 में कार्यपालक यंत्री के पद पर पदोन्नत किया गया क्योंकि अपीलार्थी की पदोन्नति के समय सामान्य श्रेणी में पद उपलब्ध नही थे – अधिकरण ने सामान्य पदोन्नत व्यक्तियों को ऊपर रखने के निदेश दिये क्योंकि वरिष्ठता की गणना भरक संवर्ग के आधार पर करनी थी – अभिनिर्धारित – अनुच्छेद 16(4ए) में 85वां संशोधन 17.06.1995 से प्रवर्तन में आया था – राज्य सरकार ने अनुसूचित जाति/अनुसूचित जनजाति के अभ्यर्थियों, जिन्होंने आरक्षित पद पर पदोन्नति पायी, को लाभ देने के लिए नियम 2002 बनाये – न तो 77वां और न ही 85वां संशोधन वर्ष 1985 से लागू किया गया है – 1975 के परिपत्र के अनुसार अपीलार्थी केवल त्वरित पदोन्नति का हकदार था न कि वरिष्ठता का – अपीलार्थी आरक्षित पद पर उसकी पदोन्नति के आधार पर वरिष्ठता का हकदार नही – अपील खारिज।

Cases referred :

(1996) 2 SCC 715, (1997) 7 SCC 209.

*C.A. No.1078-81/2005

JUDGMENT

The Judgment of the Court was delivered by **A.K. MATHUR, J.** :– These appeals are directed against the order dated 15th may 2003 passed by the Division Bench of Madhya Pradesh High Court in Writ Petition No. 5634 of 1999, whereby Shiv Nath Prasad, appellant (herein) challenged the order passed by the State Administrative Tribunal challenging the promotion of petitioner/appellant before us and private respondents who belong to non-scheduled caste. The case of the appellant (herein) was that he was appointed as Assistant Engineer in the Public Works Department after selection through Madhya Pradesh Public Service Commission. Petitioner/Appellant (Scheduled Caste) alongwith other Schedule Caste and other private respondents (non-SC) were selected and appointed as Assistant Engineers on the basis of Civil Services Examination conducted by the Madhya Pradesh Public Service Commission. The names of scheduled caste candidates appeared at S.Nos. 23, 24 and 25 below the name of the respondent Saran Pal Jeet Singh Tulsi (herein). After their appointment, they joined the duties on the post of Assistant Engineer on different dates in the year 1972. The names of the petitioner/appellant and other scheduled caste candidates were shown in the select list prepared by the Public Service Commission in lower position and their seniority was also drawn on the post of Assistant Engineer in the order mentioned in the select list. In the gradation list, issued for the post of Assistant Engineer as on 1.4.1982, the names of the petitioner/appellant and other scheduled caste candidates duly selected appeared at S. Nos 187, 189 and 190, while the name of the respondent no. 1 (herein) and others appeared between S.Nos 168-186. Therefore, admittedly, the respondents (herein) were senior to the petitioner/appellant. Thereafter, the petitioner/appellant was promoted to the post of the Executive Engineer in July, 1980 against the reserved post of the Executive Engineer, whereas, other private respondents (non-scheduled caste candidates) were not considered for promotion on account of non-availability of post in general category. But, they were considered and appointed on the post of Executive Engineer in the year 1985, i.e. much after the promotions of the scheduled caste candidates including that of petitioner/appellant before us. A provisional gradation list was issued and published on 18.6.1991 and objections were invited and that list was finalized on 8.10.1991. In this gradation list, the candidates who were appointed against the scheduled caste vacancies were shown above the other private respondents who were appointed against the general quota.Persons who were promoted against the reserved category were placed low in the merit prepared by the Public Service Commission, but shown as senior, on account of their earlier promotion on the post of Executive Engineer against reserved category, and thereby having march over the persons of the general quota, who were promoted later than these candidates, i.e. scheduled castes/scheduled tribes. This list was challenged before Tribunal and a prayer was made that they be placed above the scheduled caste candidates, because they were not superseded by the

scheduled caste candidates but on account of non-availability of post under general quota, they could not be promoted. Therefore, there is no case of supersession and as such, the seniority position of the Assistant Engineers, prepared on the basis of the merit list of the Public Service Commission should be followed and they be made senior to the persons, who were appointed against the scheduled caste quota. It was also contended before the Tribunal that on account of General Admir.istration Department circulars dated 2.5.1975 and 17.5.1975 and as per the provisions of the M.P. Civil Service (General Conditions of Service) Rules, 1961 (hereinafter referred to Rules of 1961), they are entitled to be placed higher in the seniority list of Executive Engineer, though they might have been promoted later. This petition was opposed before Tribunal by private respondents (Scheduled Caste candidates), as well as by the State. The claim of the petitioner was denied before Tribunal and according to the return filed by the private respondents, it was claimed that since the private respondents, i.e., scheduled caste candidates were promoted on recommendation of DPC in different years, therefore, by virtue of their date of appointment, they became senior to the person from general quota and as such they are entitled to higher seniority. The objection of limitation was also raised. The objection of limitation was overruled by Tribunal and Tribunal allowed the application of those applicants and directed to consider all the petitioners before Tribunal and other persons similarly selected against general quota, for promotion to the post of Superintending Engineer from the date prior to the date on which private respondent no. 2 (petitioner/appellant) was promoted by calling a Review Departmental Promotion Committee and consequently, all benefits to be given to them, if they were found suitable including for the post of the Chief Engineer and if it would become necessary to revert the private respondent no. 2 (petitioner/appellant) from the post of Chief Engineer for want of the post, such order shall be made within two months, however, no arrears shall be paid. Aggrieved against this order of Tribunal, the present writ petition was filed by the petitioner/appellant challenging the order of the Tribunal.

2. The contention raised before the High Court was that since the appellant (herein) was promoted to the post of Executive Engineer earlier than to the respondent (herein) and thereafter, he was promoted to the post of Superintending Engineer and the respondent (herein) was promoted to the post of Superintending Engineer later, therefore, he cannot be equated with the petitioner as such order of Tribunal is not sustainable. He also claimed seniority over the respondent (herein), because the petitioner/appellant was promoted to the post of Executive Engineer much earlier than him. He claimed seniority in the cadre of Executive Engineer on account of longer length of officiation. Therefore, the challenge of the respondent (herein) before the Tribunal, claiming seniority over and above him on the post of Executive Engineer was not sustainable and in that connection, the case of *Akhil Bhartiya Soshit Karamchari Sangh* was relied (AIR 1996 SCC 3534). As against this, it was contended on behalf of respondent (herein)

that since the respondent was placed higher in the seniority in the post of Assistant Engineer, i.e. the feeder cadre on the basis of the selection made by the Public Service Commission, therefore, he will carry his seniority on promotion to thepost of Executive Engineer and that seniority cannot be disturbed, simply because the petitioner got the promotion on the post of Executive Engineer earlier than the petitioner on account of the reserved post being available, the basic seniority cannot be disturbed and in that connection, reliance was placed in the case of *Ajit Singh Juneja and others vs. State of Punjab and others* (1996) 2 SCC 715 and *Ajit Singh and others vs. State of Punjab and others* (1999) 7 SCC 209. It was contended on behalf of the State that on account of the amendment in the Article 16 (4A) in the Constitution, the law laid down in the case of *Ajit Singh I and Ajit Singh II*(Supra) lost their basis and, therefore, they are not applicable. It was also contended by the State that since they were promoted against the reserved category on the post of Executive Engineer by five years earlier than the general quota candidates, therefore, they would carry their seniority in the cadre of the Executive Engineer from their date of promotion. It was also contended that subsequently, candidates from reserved category including petitioner/appellant was promoted to the post of Superintending Engineer on 7.4.1993, while general category persons as Superintending Engineer on 8.6.1995. In this background, the High Court framed two questions which reads as under:

> "1. Whether the general category candidates are entitled to higher seniority in the promotional cadre of Executive Engineer as they were senior in the feeder cadre of Assistant Engineer irrespective of their date of promotion?
>
> 2. Whether the reserved category candidates should be held to be senior to that of general category candidates on account of their length of seniority in the cadre of Executive Engineer from the date of their actual officiation based on their regular promotion to this post?"

3. The recruitment to the promotions within the service are governed by the provisions of the M.P. Public Works Department Engineering (Gazzetted Service Recruitment) Rules 1969 (hereinafter referred to Rules of 1969). The promotion to the post of Executive Engineer, as per these rules is hundred per cent from the post of Assistant Engineer. Therefore, the feeder cadre for the post Executive Engineer is Assistant Engineer. The selection is required to be made on the basis of merit-cum-suitability. It further contemplates that a person with exceptional merit and suitability can be recommended by the Departmental Promotion Committee for promotion to the post of Executive Engineer and that list is to be sent to the Public Service Commission for approval and, thereafter, the Government makes appointment on the recommendation so made by the Departmental Promotion Committee. Therefore, the feeder cadre for promotion is the Assistant Engineer on the basis of seniority list so prepared. But the rules did not provide

that in case the promotion is made against the scheduled caste vacancy, then how seniority will be assigned. In order to fill up this gap, Executive Memoranda were issued by the State Government on 2.5.1975 and 17.5.1975, which provide for reservation in promotion as well as provisions made for fixation of inter-se seniority between those who were promoted against reserved quota on the basis of roster-point. Para 3(3) of the Memorandum contemplated that though the persons may have been promoted against reserved category but their inter-se seniority between the general category candidates and the reserved category candidates so promoted shall be maintained as was in the feeder cadre from which they were promoted. In the present case, the appellant (herein) was not selected on account of exceptional merit, but on account of the post being available against the roster-point, scheduled caste category. Therefore, his promotion was on account of the reserved quota and as such he will carry his seniority as was in the feeder post, i.e., Assistant Engineer. Sub-para 3 of para 3 of the above said memorandum, which is reproduced, reads as under:

> "All the persons selected in the promoted post including Scheduled Caste and Scheduled Tribe persons, their inter-se seniority will be determined according to their seniority in the post from which they have been promoted. But if any person has been placed above the persons so promoted on the basis of his special qualification, his seniority in the promoted post will be fixed according to his seniority."

4. Therefore, in this background it was held that the petitioner/appellant will carry his seniority as was given in the feeder post and he cannot have a march on account of his earlier promotion against the reserved category. The Division Bench of the High Court relied on the decision of this Court in the case of *Ajit Singh I and Ajit Singh II* (Supra). In this background, High Court confirmed the order of the Tribunal and dismissed the writ petition of appellant aggrieved by this order of the Division Bench of High Court dated 15.5.2003, the present appeal was filed.

5. Learned counsel for the appellant submitted that since the petitioner/appellant was promoted on the post of Executive Engineer in 1980 and respondents were promoted in 1985, therefore, petitioner/appellant had already had a march over the respondent and he also submitted that by virtue of the 77th and 85th constitutional amendment of Article 16 (4A), the promotion of these persons shall be deemed to be validly made, therefore, the petitioners are entitled to that higher seniority and consequential benefit of earlier promotion to the post of Executive Engineer, Superintending Engineer and likewise to the post of Chief Engineer. It was submitted that this was a constitutional mandate and Court cannot ignore the constitutional mandate. Therefore, the learned counsel submitted that the view taken by the High Court cannot be sustained. He also submitted that the ratio laid down in the case of *Ajit Singh I and Ajit Singh II* (Supra) does not hold good

anymore in view of the 77th and 85th constitutional amendment and that shall deem to be come into force retrospectively. Consequently, all the benefit given by the petitioner is correct. As against this, the learned counsel for the respondent strenuously urged before us that the constitutional amendments i.e. 77th and 85th were retrospective with effect from 17.6.1995 and it cannot go beyond that. Therefore, present case has to be decided on the basis of legal position obtaining at the relevant time. The retrospectivity cannot be given to constitutional mandate beyond what Parliament has already given.

6. Before we proceed to consider the rival submissions, it would be appropriate to reproduce both the 77th and 85th constitutional amendments. The 77th amendment in the Constitution was inserted by Article 16 (4A) with effect from 17.6.1995 enabling State Government to make provision for reservation in State services in favour of scheduled castes and scheduled tribes in matter of promotion which was not there prior to this amendment, but it did not provide any benefit of seniority. Therefore again Article 16 (4A) was amended by the Constitution (85th Amendment) Act, 2001 with effect from 17.6.1995 providing consequential seniority. Both amendments reads as under:

> "(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion of any class or classes of posts in the services under the State in favour of the Scheduled Castes and Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State."
>
> "(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State."

7. As a result of this subsequent amendment which came into force by the Constitution (85th Amendment) Act, 2001 with effect from 17.6.1995, the candidates who have been given promotion against reserved category could possibly claim a consequential seniority. In fact, both these amendments in Article 16 (4A) facilitated the rules to be framed by the State Government. Prior to this, the State Government had issued only executive instructions to cover this omission. This constitutional mandate came to the rescue of the State so as to enable the State to provide reservation in promotion and consequential seniority with effect from 17.6.1995. In fact, these two amendments necessitated because of the decision given in the Ajit Singh II vs. State of Punjab wherein their Lordships observed as under:

> "The roster-point promotees (reserved category) cannot,therefore, count their seniority in the promoted category from the date of their

continuous officiation in the promoted post vis-a-vis the general candidates who were senior to them in the lower category and who were later promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate, he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level. Virpal and Ajit Singh have been correctly decided and Jagdish Lal is not correctly decided. In Jagdish Lal the seniority rule which referred to continuous officiation and which applied to promotions made after providing equal opportunity as per rules was delinked from the promotion rule and applied to roster promotees, which was the main reason for arriving at a different result."

8. In fact, by virtue of this ratio laid down the Constitution Bench, 85th Amendment was necessitated which came by the Amendment Act of 2001 and it was made retrospective with effect from 17.6.1995. In case of *Ajit Singh* II, all earlier cases were considered by this Court, therefore, no useful purpose will be served by referring to all the decisions referred by learned counsel for the petitioner. After the 85th amendment, the position has now been crystallized and the State Government also framed consequently, Rules of 2002, known as Madhya Pradesh Public Service Commission (Services Promotion Rules 2002). Prior to that the State Government had already framed the Act known as Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994. By this Act, the Government only provided that State Government can by notification, provide roster-point promotion to the scheduled castes and scheduled tribes in the services. This Act came in 1994, but there was no consequential provision for providing the seniority, therefore, they further framed the rules, known as Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Sanshodhan Adhiniyam, 2002, and this came into force by the notification issued on 13.5.2002 by the State Government. By amending Act of 1994, sub-Section 5-A was inserted in Section 5 of the main act of 1994 enabling the State Government to provide for consequential seniority in favour of scheduled castes and scheduled tribes by framing the rules or by issuing instructions and thereafter, consequently, Madhya Pradesh Public Services (Promotion) Rules, 2002 was framed enabling the benefit to scheduled castes and scheduled tribe candidates, who got promotion against the reserved post. Therefore, now, by virtue of the 77th and 85th constitutional amendment and consequential Act and rules framed by the State of Madhya Pradesh, it is possible to provide a proper seniority to the persons who have been promoted against scheduled caste and scheduled tribe quota- a seniority as a result of their appointment against reserved post of scheduled caste or scheduled tribe. But, this has all come into force from 2002 only.

9. But in the present case, the issue triggered in the year 1985 and these rules at that time were not in force. Neither the constitutional amendments had come into force nor were the rules. Neither the 77th constitutional amendment nor the 85th constitutional amendment had been made retrospective from 1985. It has been made retrospective with effect from 17:6.1995 only. The controversy dates back to 1985 when the general quota candidates were promoted in 1985 on the post of Executive Engineer and the appellant respondent was promoted in 1980. At that time, the circular of the Government of 1975 was in force and as per that circular of the Government, incumbent was not entitled to the seniority on account of his accelerated promotion against the reserved quota, as per the circular of 1975 as quoted above, he was only entitled to the accelerated promotion but not the seniority; therefore, in this view of the matter, we are of the opinion that the view taken by the Division Bench of High Court is correct and no interference is warranted in the present case. Consequently, all the appeals are dismissed. No order as to costs.

Appeal dismissed.

I.L.R. [2008] M. P., 3066

SUPREME COURT OF INDIA

Before Mr. Justice S.B. Sinha & Mr. Justice V.S. Sirpurkar

15 January, 2008*

AHILYABAI ... Appellant

Vs.

MEHARWAN SINGH ... Respondent

Criminal Procedure Code, 1973 (2 of 1974), Sections 125(1) & 125(3) Explanation - ***Maintenance*** - *Appellant married to respondent in the year 1978-79 - Gauna ceremony performed in the year 1982 - Appellant did not join her matrimonial house - Respondent contracted second marriage - Held - As respondent has contracted second marriage in terms of explanation appended to Sub-section (3) of Section 125 of Code, appellant is entitled to claim maintenance from respondent although appellant had refused to live with respondent - Appeal allowed.* (Para 4)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 125(1) व 125(3) स्पष्टीकरण – भरण–पोषण – अपीलार्थी का विवाह प्रत्यर्थी के साथ वर्ष 1978–79 में हुआ – गौने की रस्म वर्ष 1982 में की गयी – अपीलार्थी अपने दाम्पत्य निवास में नही गयी – प्रत्यर्थी ने द्वितीय विवाह कर लिया – अभिनिर्धारित – चूंकि प्रत्यर्थी द्वितीय विवाह कर चुका है, संहिता की धारा 125 की उपधारा (3) से अनुलग्न स्पष्टीकरण के निबंधनों के अनुसार अपीलार्थी प्रत्यर्थी से भरण–पोषण का दावा करने की हकदार है यद्यपि अपीलार्थी ने प्रत्यर्थी के साथ रहने से इंकार कर दिया था – अपील मंजूर।

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*Cr.A. No.126/2008

ORDER

Leave granted.

The parties hereto were married in the year 1978-79. The 'Gauna' ceremony was solemnized in the year 1982. Allegedly, on the plea that the appellant had not joined her matrimonial home in the year 1997, respondent contracted a second marriage with Lalitabai during the subsistence of the first marriage.

2. In the year 2002 she filed an application for grant of maintenance in terms of Section 125 of the Code of Criminal Procedure. The learned Magistrate allowed the said application directing grant of maintenance @ Rs. 1,000/- per month. Respondent filed a revision application thereagainst. The Revisional Court set aside the said order opining as under:

> "....that helps the revisionist wherein it has been laid down that if the husband does not disregard the wife nor does he denies to maintain her and despite three letters calling her to join matrimonial home, if the wife refuses to live with her husband and if after enough time the husband marries second time, the wife is not entitled for maintenance u/s 125 Cr.P.C. if Rs. 150 demanded as maintenance for the son one is not entitled for Rs. 200 per month maintenance. In this regard *Kamlabai Vs. Gajanand* 1984 MPWN 170 is also considerable."

It was concluded:

> " From the finding on issue No.1 & 2 it is apparent that the applicant cannot be considered eligible to seek maintenance. Therefore, the maintenance as granted by the court below cannot be considered appropriate. For these reasons the Revision Petition is acceptable. Therefore, the impugned order dated 27.10.2004 as passed by the court below is set aside. Copy be sent to the concerned Court. Record of the court below be returned."

3. By reason of the impugned judgment, the High Court has refused to interfere with the revisional order holding that the jurisdiction of the High Court is limited.

4. Having heard learned counsel for the parties, we are of the opinion that in view of the admitted fact that the respondent had contracted a second marriage in terms of explanation appended to Sub-section 3 of Section 125 of the Code of Criminal Procedure, appellant was entitled to claim maintenance from her husband although she had refused to live with him.

5. The High Court while declining to exercise its revisional jurisdiction failed tonotice that the first revisional Court was also exercising the same jurisdiction.

6. For the reasons aforementioned, the impugned judgment in Cr.Revision No. 766/2005 dated 8.12.2005 of the High Court as also order dated 25.6.2005 passed

by the Sessions Judge are set aside. The order dated 27.10.2004 passed by the learned Magistrate is restored.

The appeal is allowed.

Appeal allowed.

I.L.R. [2008] M. P., 3068

WRIT APPEAL

Before Mr. A.K. Patnaik, Chief Justice & Mr. Justice Ajit Singh

14 May, 2008*

HARDEEP SINGH ANAND ... Appellant

Vs.

STATE OF M.P. & ors. ... Respondents

A. Constitution, Article 21 - *Speedy trial - Delay in trial - Delay of five years in trial on account of State not taking timely steps in producing and examining witnesses on behalf of prosecution - Appellant ultimately acquitted by trial court - Appellant entitled for compensation as speedy trial is integral and essential part of fundamental right to life and liberty.*

(Paras 8 & 9)

क. संविधान, अनुच्छेद 21 – त्वरित विचारण – विचारण में विलम्ब – राज्य द्वारा अभियोजन की ओर से साक्षियों को पेश करने और उनकी परीक्षा कराने में कार्यवाही न करने के कारण विचारण में पाँच वर्ष का विलम्ब – विचारण न्यायालय द्वारा अपीलार्थी को अंतिमतः दोषमुक्त किया गया – अपीलार्थी प्रतिकर का हकदार क्योंकि त्वरित विचारण जीवन और स्वतंत्रता के मूल अधिकार का अभिन्न और आवश्यक अंग है।

B. Constitution, Article 21 - *Handcuffing - Appellant handcuffed by police - No reasons given by State that why such handcuffing was necessary - Appellant entitled for compensation.* (Para 13)

ख. संविधान, अनुच्छेद 21 – हथकड़ी लगाना – पुलिस द्वारा अपीलार्थी को हथकड़ी लगाई गई – राज्य द्वारा कोई कारण नही दिया गया कि हथकड़ी लगाना क्यों आवश्यक था – अपीलार्थी प्रतिकर का हकदार।

C. Constitution, Article 21 - *Writ jurisdiction - Violation of fundamental right - State can be directed to pay compensation to a person whose rights under Article 21 are affected.* (Para 14)

ग. संविधान, अनुच्छेद 21 – रिट अधिकारिता – मूल अधिकारों का अतिक्रमण – उस व्यक्ति को, जिसके अनुच्छेद 21 के अन्तर्गत अधिकार प्रभावित हुए हैं, प्रतिकर का संदाय करने के लिए राज्य को निदेशित किया जा सकता है।

Cases referred :

(1996) 6 SCC 354, (1980) 3 SCC 526, AIR 1983 SC 1086, (1991) 2 SCC 373, AIR 1997 SC 610.

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*W.A. No.1754/2007 (Jabalpur)

Hardeep Singh Anand, appellant in person.
Kumaresh Pathak, Dy.A.G., for the respondent/State.

ORDER

The Order of the Court was delivered by **A.K. PATNAIK, C. J.** :– This is an appeal filed under Section 2(1) of the M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam,2005 against the order dated 24.8.2007 passed by the learned single Judge in W.P.No.4638 of 2007.

2. The relevant facts briefly are that the appellant was running a Coaching Centre named "Deepika Classes" preparing students for taking Pre-Medical Test, Pre-Engineering Test and other tests for admissions to MBBS, Dental, Engineering, IIT courses. On 8.6.1992, a raid was conducted in the house of the appellant at the instance of Shri Raghava Chandra, the then Collector, Jabalpur and thereafter a Criminal Case No.314 of 2004 under Sections 420 read with Section 34 IPC was registered against the appellant. After investigation, a charge-sheet was filed and after trial, the appellant was acquitted on 26.8.2004. The appellant then filed Writ Petition No.4368 of 2004 contending inter-alia that although the appellant was in police custody in Police Station, Gorakhpur since 10.00 p.m. on 8.6.1992, he was unnecessarily handcuffed by the Police and a number of daily newspapers published his photographs and his sister, who loved him, on seeing his photographs was shocked and expired on 17.6.1992. The appellant also contended in the writ petition that the prosecution knew right from the beginning that the cases registered against the appellant were false and did not deliberately send notices to the three independent witnesses Jitendra, Shailendra and Arun Chouksey from 1992 up to 2003 and the witnesses were produced before the Court only at the end of 2003 and thus there was violation of the fundamental right to speedy trial guaranteed under Art. 21 of the Constitution. In the writ petition, the appellant prayed that the respondents 2 to 20 should be prosecuted under the relevant sections of law and the respondent No.21 onwards should be prosecuted for criminal defamation and other sections of law.

3. When the writ petition came up for admission before the Court, a learned single Judge in his order dated 24.2.2005 ordered that he was inclined to admit the matter only with regard to issue regarding grant of compensation for causation of delay in disposal of Criminal Case No.314 of 2004, which arose in relation to the occurrence of the year 1992 and accordingly directed issuance of notices to respondents I and 6 to 17 only.

4. Pursuant to the notices, returns were filed by respondent No. I and some other respondents and a learned single Judge of this Court heard the learned counsel for parties, and after going through the documents filed by the appellant as well as the record pertaining to Criminal Case No.314 of 2004 held that on a few occasions, time was sought from the trial Court by the prosecution but on most of the occasions trial was adjourned at the instance of the appellant himself

and from the proceedings of the trial Court, it cannot be held that unnecessary or deliberate adjournments were sought by the prosecution in order to delay the trial and hence the question of granting compensation for delay in trial to the appellant did not arise and accordingly dismissed the writ petition by order dated 24.8.2007.

5. Thereafter, the appellant filed an application for review of the order dated 24.8.2007 passed by the learned single Judge which is numbered as M.C.C.N0.7325 of 2005 in which the appellant contended that the Additional Advocate General, who appeared on behalf of the State submitted a typed copy of the proceedings of Criminal Case No.314 of 2004 in which incorrect dates of proceedings were mentioned and for this reason, the learned single Judge held that unnecessary and deliberate adjournments were sought by the appellant in order to delay the trial and dismissed the writ petition. The learned single Judge, however, dismissed the review petition by order dated 12.10.2007 saying that the record of the criminal case was very much available when the matter was argued and the order dismissing the writ petition was passed after perusing the record of the Criminal Case and after scrutinizing the same. Aggrieved, the appellant has filed this appeal.

6. We have heard the appellant in person and Mr. Kumaresh Pathak, learned Deputy Advocate General for the State and we find that the main ground taken in the appeal memorandum is that the learned single Judge has failed to appreciate that the prosecution had delayed the trial by almost six years from 9.3.1998 to 26.8.2004. To consider the aforesaid ground taken in the memorandum of appeal, we have called for the records of Criminal Case N0.314 of 2004 and on perusal of the same, we find that on 9.3.1998, the Court rejected the prayer of the appellant to modify the charges and on 12.3.1998, the charges were framed. Thereafter on 6.4.1998, the case had to be adjourned because the appellant was absent. On 6.5.1998, the case had to be adjourned because the witnesses were absent. On 27.6.1998, the witnesses and the appellant/accused were absent. On 27.7.1998, the witnesses and the appellant were absent. On 7.9.1998, the case had to be adjourned because the witnesses and the appellant were absent. The delay up to 7.9.1998 was, therefore, on account of absence of the witnesses as well as the absence of the appellant.

7. The first witness on behalf of the prosecution, namely K.C. Jain (P.W.I), City Magistrate was examined on 15.3.1999. Thereafter, on a number of dates, the case had to be adjourned because the summons could not be served on the witnesses and on 28.6.2000, the trial Court issued show cause notice to the Station Officer. Even thereafter, witnesses were not served with summons on various dates. On 22.3.2002, Rekha Jain (P.W.2) and Yogendra Pal Singh (P.W.3) were examined. On 10.12.2002, although the appellant applied for closing the prosecution case, the trial Court rejected the prayer and fixed the case for 3.2.2003 for examining of the remaining witnesses. On 6.3.2003, the trial Court pulled up the

prosecution for not producing the remaining witnesses and fixed the case for 5.5.2003 for further evidence. On 5.5.2003, the trial Court again took serious note of the delay caused by the prosecution and directed the prosecution to produce the witnesses on the next date. On 9.10.2003, Arun Kumar (P.W.4) was examined by the prosecution. To examine the two remaining witnesses Jitendra and Shailendra, the Public Prosecutor took time. On 16.10.2003, Jitendra (P.W.5) was partly examined and his evidence could not be completed in absence of the seized articles. Although Shailendra (P.W.6) was also present on 16.10.2003 but he could not be examined.

8. On 3.12.2003, C.N. Dubey was present but he could not be examined since the record of the trial Court had been called for inspection by the Additional District Judge. On 15.12.2003, Shailendra (P.W.6) was examined. On 16.1.2004, bailable warrants were issued to two witnesses left for examination. On 22.1.2004, the application filed by the appellant for re-examination of C.N. Dubey was rejected. On 6.5.2004, examination of Jitendra (P.W.5) was completed and the prosecution case was closed. Thereafter, the defence witnesses were examined on 25.5.2004 and 11.6.2004 and the defence evidence was closed on 13.8.2004. Arguments were heard on 20.8.2004 and the appellant was acquitted on 26.8.2004. The aforesaid discussion would show that the State took four years from 15.3.1999 to 6.5.2004 to produce and examine its witnesses in the trial.

9. We may now examine the returns filed by the State in W.P.No-4368 of 2004 to find out whether the prosecution had any reasonable explanation for the delay. In para 9 of the return filed by the State in W.P.No.4368 of 2004, it is stated that the appellant has not filed any documents to show that the delay was caused because of the reasons on the part of the answering respondent and that the appellant ought to have approached the appropriate forum to get directions for speedy trial of the criminal case and having not availed the said remedy, he cannot now raise such a ground in this writ petition. In the additional return filed on behalf of the respondent No. 1 State on 19.2.2007, it is stated that the State was not at all responsible for causing any delay in conclusion of the trial but delay has been caused because the Court has been quite lenient and sympathetic towards the appellant and granted every prayer made on behalf of the appellant and thus, it is not correct that the delay has been caused by any latches on the part of the respondent No.1 State. But as we have seen from the order-sheets of the Criminal Case No.314 of 2004, the delay is not on account of the leniency and sympathy shown by the Court towards the appellant but because of the prosecution failing to produce and examine the witnesses on the various dates to which the case was fixed. In the return and the additional return, therefore, no explanation as such has been furnished by the State for the delay in producing and examining the witnesses on behalf of the prosecution during the period 15.3.1999 to 6.5.2004. We accordingly hold that the delay of five years was on account of the respondent No. I State not taking timely steps in producing and examining the witnesses on

behalf of the prosecution and that the findings of the learned Single Judge in the impugned order that on most of the occasions trial was adjourned at the instance of the appellant and that from the proceedings of the trial Court, it cannot be said that unnecessary adjournments were sought by the prosecution in order to delay the trial are not correct.

10. Speedy trial was held as an integral and essential part of the fundamental right to life and liberty of a person, guaranteed under Article 21 of the Constitution. P.N.Bhagwati, J (as he then was) speaking for himself and A.D.Koshal.J held:

> "....If a person is deprived of his liberty under a procedure which is not 'reasonable, fair or just', such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Now obviously procedure prescribed by law for depriving a person of his liberty cannot be 'reasonable, fair or just' unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Art. 21."

11. Again in *Anukul Chandra Pradhan vs. Union of India and others,* (1996) 6 S.C.C. 354, the Supreme Court took a view that trial of those involving public men should be concluded more expeditiously and this was the requirement of speedy trial guaranteed under Art. 21 of the Constitution. Para 6 of the judgment of the Supreme Court in *Anukul Chandra Pradhan vs. Union of India and others* (supra) is quoted herein below:

> " We may also observe, that the court concerned dealing with the above matters has to bear in mind that utmost expedition in the trial and its early conclusion is necessary for the ends of justice and credibility of the judicial process. Unless prevented by any dilatory tactics of the accused, all trials of this kind involving public men should be concluded most expeditiously, preferably within three months of commencement of the trial. This is also the requirement of speedy trial read into Article 21."

12. With regard to handcuffing, in *PremShankar Shukla vs. Delhi Administration,* (1980) 3 S.C.C. 526 , Krishna Iyer, J.speaking for himself and Chinnappa Reddy, J. made the following observations in para 22 at page 537 of the S.C.C.:

> " Handcuffing is prima facie inhuman and, therefore, unreasonable is over-harsh and at the first flush arbitrary. Absent fair procedure and objective monitoring, to inflict 'irons' is to resort to zoological strategies repugnant to Article 21. Thus, we must critically examine the justification offered by the State for this mode of restraint. Surely, the competing claims of securing the prisoner from fleeing and protecting his personality claims barbarity have to be harmonized. To prevent the escape of an under trial is in public interest, reasonable, just and cannot, by itself, be castigated. But to bind a man hand-and-foot, fetter his limbs with hoops of steel, shuffle him, defile his dignity, vulgarise society and foul the soul of our constitutional culture. Where then do we draw the humane line and how far do the rules err in print and praxis?

13. In the instant case, the appellant was well educated person and was coaching students for entrance tests and examinations for admissions to MBBS, Engineering, IIT etc. and it is alleged in para 5.6 of the writ petition that when he was already in Police custody in Gorakhpur Police Station at 10.00 p.m. on 8.6.1992, he was unnecessarily handcuffed by the police and number of daily newspapers published the photographs of the appellant handcuffed and his sister, who loved him as son, saw the photographs in the newspapers and was shocked and expired on 17.6.1992. The appellant has produced before us a newspaper in which his photograph with the handcuff has been published. In paragraph 8 of the return filed on 4.2.2006, the respondent no. 1 denied that the appellant was unnecessarily handcuffed, but no reasons have been given in the return why such handcuffing was necessary.

14. The next question is whether the appellant is entitled to any compensation from the respondent No. 1 State for delay of five years in the trial and for handcuffing in violation of his fundamental rights under Art. 21 of the Constitution. In *Rudul Sah vs. State of Bihar and another,* AIR 1983 S.C. 1086, the Supreme Court has taken a view that one of the effective ways in which violation of fundamental rights under Art. 21 of the Constitution can reasonably be prevented, is to direct the State to pay compensation to the person whose rights under Art. 21 of the Constitution is affected. In the language of the Supreme Court:

> "..... Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and the compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and

which present for their protection the powers of the State as a shield. If civilization is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

15. In fact, in *State of Maharashtra and others vs. Ravikant S. Patil,* (1991)2 S.C.C. 373, the Supreme Court referring to the *Ridul Sah vs. State of Bihar* (supra) upheld the award of compensation of Rs.10,000/- by the High Court of Bombay to an under-trial prisoner who had been handcuffed and taken through the streets in a procession by the police during investigation. We are, thus, of the view that the appellant is entitled to compensation for violation of his fundamental rights guaranteed under Art. 21 of the Constitution to speedy trial and not to be handcuffed without valid justification.

16. The next question is how much compensation the appellant is entitled? In *D.K.Basu Vs. State of West Bengal* (AIR 1997 SC 610), the Supreme Court, after examining the liability of the State to its citizens for infringement of their fundamental right laid down the principle for assessment of compensation to be paid by the State as under :

"In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortuous act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not interrogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

17. During the five years of delay in the trial from 15.3.1999 to 6.5.2004 caused by the State, the appellant's liberty was not affected in as much as he was not

under imprisonment but was on bail. Hence, the appellant will not be entitled to a huge amount of compensation as claimed by him. Nonetheless, the appellant was handcuffed without a valid justification and his dignity as a human being had been affected. In the circumstances, an expeditious trial and his acquittal would have restored his personal dignity as early as possible. But the State instead of taking timely steps to produce and examine the prosecution witnesses delayed the trial for long five years. In the facts and circumstances of the case, we award a compensation of Rs.70,000/- (Rupees seventy thousand only) to the appellant. This compensation will be without prejudice to any claim that the appellant may make in a civil Court for damages.

18. In the result, the impugned order passed by the learned single Judge is set aside and the appeal is allowed. We accordingly direct the respondent No. 1 State to pay the appellant a sum of Rs.70,000/-(Rupees seventy thousand only) as compensation within a period of three months from today. No order as to costs.

Appeal allowed.

I.L.R. [2008] M. P., 3075

WRIT APPEAL

Before Mr. A.K. Patnaik, Chief Justice & Mr. Justice Shantanu Kemkar

25 July, 2008*

EVEREST INDUSTRIES LTD., KYMORE ... Appellant

Vs.

ASBESTOS KARMCHARI SANGH & ors. ... Respondents

Industrial Relations Act, M.P. (27 of 1960), Section 51 - *Where a dispute is referred in accordance with Section 51 of Act to the Industrial Court for arbitration by the Government and during pendency of reference a settlement of industrial dispute is arrived at between the employer and the employees -Industrial Court must give due weight to the terms of the settlement unless it is satisfied that the settlement was not just or fair or was vitiated by mala fides or absence of consent of the parties - The contention of the employer that the direction in the order of Industrial Court to regularise the services of 16 to 18 Temporary Substitute Pool employees in terms of Clause 9 of the settlement dated 20.10.1999 was beyond the jurisdiction of the Industrial Court and was a nullity, is misconceived.* (Para 12)

औद्योगिक संबंध अधिनियम, म.प्र. (1960 का 27), धारा 51 – जहाँ विवाद सरकार द्वारा अधिनियम की धारा 51 के अनुसार मध्यस्थता के लिए औद्योगिक न्यायालय को निर्दिष्ट किया जाता है और निर्देश के लम्बित रहने के दौरान नियोक्ता और कर्मचारियों के मध्य औद्योगिक विवाद का समझौता हो जाता है – औद्योगिक न्यायालय को समझौते के निबंधनों को सम्यक् महत्व देना चाहिए, जब तक यह संतुष्टि नही हो जाती कि समझौता न्यायसंगत या ऋजु नही था या असद्भावना

*W.A. No.134/2006 (Jabalpur)

या विवाद के पक्षकारों की सहमति के अभाव से दूषित था – नियोक्ता का तर्क, कि औद्योगिक न्यायालय के आदेश में समझौता तारीख 20.10.1999 के खण्ड 9 के निबंधनों के अनुसार 16 से 18 अस्थायी स्थानापन्न पूल कर्मचारियों की सेवाएँ नियमित करने का निदेश औद्योगिक न्यायालय की अधिकारिता से परे था और शून्य था, गलत है।

Cases referred :

1973 MPLJ (18) 1040, AIR 1967 SC 469, 1970 MPLJ 946, 2003 SAR (Civil) 583, AIR 2005 SC 1252, (2008) 2 SCC 350, (2007) 7 SCC 206.

Rajendra Tiwari with *Sanjay Verma,* for the appellant.

ORDER

The Order of the Court was delivered by **A.K. PATNAIK, C. J. :–** This is an appeal filed under Section 2 of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 against the order dated 13.2.2006 passed by the learned Single Judge in Writ Petition No.883/2004.

2. The facts relevant for disposing of this appeal briefly are that the Government of Madhya Pradesh, Labour Department, Bhopal by order dated 22.3.1997 under Section 51 of the Madhya Pradesh Industrial Relations Act, 1960 (for short 'the Act') referred 29 subjects of dispute between the appellant and its employees to the Industrial Court, Madhya Pradesh, Jabalpur Bench for arbitration which was registered as Reference Case No.3/99 MPIR. The parties to the industrial disputes filed their respective statements of claim and thereafter evidence was adduced by the parties and the Industrial Court disposed of the reference by order dated 12.3.2004. The first subject of dispute in the reference case was whether the Temporary Substitute Pool (TSP) employees working in the Undertaking of the appellant performed the work of permanent nature and is it proper to classify them as TSP employees ? The Industrial Court held that TSP employees who were not working on the vacant posts would not be eligible to be categorised as regular employees as they work in the capacity of the shift employees in the absence of regular employees. In paragraphs 9 and 10 of its order dated 12.3.2004, the Industrial Court however found that the present strength of the TSP employees under the appellant was 16 to 18 and accordingly directed that the appellant should regularise these 16 to 18 employees as per clause 9 of the settlement dated 20.10.1999 Ex.D-2 as the settlement was in force.

3. The order dated 12.3.2004 of the Industrial Court was challenged by respondent No.2 and 3 in W.P. No.883/2004 under Clause 226 of the Constitution before this Court and by the impugned order of the learned Single Judge while rejecting all the contentions raised by the respondents No.2 and 3 in the writ petition directed the appellant to regularise the services of TSP employees numbering 16 to 18 in accordance with clause 9 of the settlement dated 20.10.1999 after observing that the appellant had not assailed the direction in the order of the

Industrial Court for regularising these TSP employees before the High Court. Aggrieved by this direction of the learned Single Judge to the appellant to regularise the services of 16 to 18 TSP employees in accordance with clause 9 of the settlement dated 20.10.1999, the appellant has filed this appeal.

4. At the hearing Mr. Rajendra Tiwari, learned senior counsel with Mr. Sanjay Verma, Advocate appearing for the appellant, submitted that respondent No.2 has ceased to be the representative Union of the employees of the appellant since May, 1998 and therefore could not file the writ petition under Article 226 of the Constitution challenging the order of the Industrial Court dated 12.3.2004 in this Court and therefore the impugned order passed by the learned Single Judge in W.P. No.883/2004 in so far as it directs the appellant to regularise the services of 16 to 18 employees in accordance with clause 9 of the settlement dated 20.10.1999 was liable to be set aside. They referred to the provisions of Section 27 of the Act which provides that the employees of an undertaking shall be represented in the order of reference by the (i) Representative Union; (ii) Registered Union and (iii) Government Labour Officer.

5. The respondent No.3 who is President of the respondent No.2 Union, on the other hand, submitted that it is the respondent no.2 Union which had raised the industrial dispute regarding the service conditions of the employees working in the undertaking of the appellant but when conciliation failed the State Government made the reference No.3/99 to the Industrial Court and therefore the respondent No.2 had the locus standi to challenge the order of the Industrial Court in a writ petition before this Court if the order of the Industrial Court did not protect the interests of the employees.

6. We find full force in the submission made on behalf of the respondent no.2. The respondent No.2 Union may not be the representative or the majority Union but it was a Union of some of the employees of the undertaking of the appellant. In *Hardeosingh and another vs. Central Government Industrial Tribunal-cum-Labour Court, Jabalpur and others,* 1973 MPLJ Vol. 18 1040, Raina, J has rightly held that employees who were not the members of the representative or majority Union can challenge a settlement or an award of the Industrial Tribunal through the Union of which they are members by filing petition under Article 226 and 227 of the Constitution.

7. Mr. Rajendra Tiwari and Mr. Sanjay Verma next submitted that it was not necessary for the appellant to challenge the direction in the order of the Industrial Court to regularise the services of 16 to 18 TSP employees because this direction of the Industrial Court was beyond the jurisdiction of the Industrial Court and was a nullity. They submitted that in a reference made by the State Government under Section 51 of the Act, the Industrial Court can only decide the disputes referred to it and since the question of regularisation of TSP employees in accordance with the clause 9 of the settlement dated 20.10.1999 was not a subject

of dispute referred to the Industrial Court, the direction of the Industrial Court in this regard was wholly without jurisdiction and the appellant was not required to challenge the same.

8. In support of their contention, Mr. Tiwari and Mr. Verma cited the decision of the Supreme Court in *The Delhi Cloth and General Mills Co. Ltd. Vs The Workmen and others,* AIR 1967 SC 469 for the proposition that the Tribunal deciding a dispute referred under Section 10 of the Industrial Disputes Act, 1947 cannot enlarge the scope its jurisdiction. They also cited a Division Bench judgment of this Court in *Madhya Pradesh State Road Transport Corporation vs President, Industrial Court, Madhya Pradesh,* 1970 M.P.L.J. 946 wherein it has been held that the Arbitrator constituted under the Act cannot enlarge the scope of reference made to it for arbitration and the Industrial Court has to confine itself to the subject matter of the dispute and other incidental matters. They also cited the decision of the Supreme Court in *S.S. Dwarka Prasad Agrawal (D) by LRs. and another vs B.D. Agrawal and others,* 2003 SAR (Civil) 583 in which the Supreme Court has held that an order passed without jurisdiction by a Court is a nullity. They relied on *Mahendra L. Jain and others vs Indore Development Authority and others,* AIR 2005 SC 1252 in which the Supreme Court having found that no plea had been raised by the appellant as to permanency as per the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 nor such issue was referred to the Labour Court has held that it was improper for the Labour court to grant relief of regularisation of the appellant on the basis of the 1961 Act. They also relied on *Chief Engineer, Hydel Project and others vs Ravinder Nath and others,* (2008) 2 SCC 350 in which the Supreme Court has held that once an original decree passed by a Civil Court in respect of the industrial dispute itself has been held to be without jurisdiction and hit by the doctrine of coram non judice, there was no question of upholding the same merely on the ground that the objection to jurisdiction was not taken on initial or first appellate stage or second appellate stage. They placed reliance on the decision of the Supreme Court in *Bongaigaon Refinery & Petrochemicals Ltd. and others vs. Girish Chandra Sarma,* (2007) 7 SCC 206 for the proposition that a plea abandoned before the Single Judge in a High Court could be raised before the Division Bench in writ appeal because the writ appeal is in continuance of the original order passed by the Single Judge in writ jurisdiction.

9. We are of the considered opinion that the contention of the appellant that the direction of the Industrial Court in the order dated 12.3.2004 to the appellant to regularise the 16 to 18 TSP employees in accordance with the clause 9 of the settlement dated 20.10.1999 Ex.D-2 is wholly misconceived. This is because in the reference made to the Industrial Court by the State Government under Section 51 of the Act by order dated 22.3.1997 one of the subjects of dispute referred to the Industrial Court for arbitration was whether TSP employees working in the

Undertaking of the appellant performed the work of permanent nature and is it proper to classify them as TSP employees ? The reason for making such a reference is that if TSP employees would be classified as permanent employees they would be entitled to regularisation in service. On the basis of the evidence adduced by the parties, the Tribunal however came to the conclusion that TSP employees were not working on vacant posts and were not eligible to be categorised as permanent employees, but the Tribunal also found that during the pendency of the reference, a settlement had been arrived at between the management and the Coordinating Committee of the workers employed in the industry of the appellant on 20.10.1999 over the subjects of dispute and clause 9 of the settlement Ex.D-2.

10. This will be clear from English translation of paragraphs 8, 9 and 10 of the order dated 12.3.2004 of the Industrial Court quoted herein below:

> "Other aspect of the case is also worth considering. After the referral of the case by the Govt. on 20.10.99, settlement arrived at between the Management and the Co-ordinating committee of the workers employed in the Industry over the dispute arisen between the parties. This settlement is Ex.D-2. Regarding the process of accomplishment of the settlement and its registration, second party witness Shri Lakhan Dwivedi has deposed in detail in his deposition, which finds place in the settlement-Ex. D-2. Certificate of Settlement-Ex.D-10 has been produced. First party/Esbestos Janta Majdoor Union has neither challenged this settlement nor adduced any evidence so that it may be proved that the settlement is unfavourable to the workers. First Party witness Mohd. Ibrar during his cross-examination has admitted that the workers accepting the settlement arrived at in the year of 99 (Ex.D-2) have been given benefit of the settlement. He is one amongst the two workers who has not got the benefit of that settlement another worker is Foolchand Dubey. He has admitted that both of them did not communicate their acceptance to the employer-Undertaking. Employer's witness-Shri Lakhan Lal Dwivedi has deposed in his examination-in-chief "Affidavits of the workers accepting the settlement dated 20.10.99. Ex.D-2 has been produced in this case that affidavits are Ex.D-12 to. Today I have brought the original Affidavits". These affidavits have been marked as Ex.D-12 to D-344. It is evident thereby that besides two employees all of the employees, after submitting the affidavit as to the acceptance of the settlement have obtained the benefit of the settlement Ex.D-2. Although, in the light of the Order dated 30.11.2001 passed in W.P. No.2043/01 statements of the employees were reduced in writing in the Camp Court, Katni. Those statements were made by the present and former employees. Many of them have stated that they were forced to sign the settlement and they are not agreed with

the settlement. But by reason of availing the benefit out of that settlement their statements are not material. Here it would be proper to mention that on behalf of the First Party neither any Schedule by the State Govt. has been incorporated nor any statement on the validity of the settlement Ex.D-2 has been produced. Moreover, this Court is not empowered under the MPIR Act, 1960 to declare any registered settlement as invalid.

On behalf of the Esbestos Janta Majdoor Union judicial principles laid down in the judicial citations AIR 1978 SC 548, AIR 1979 SC 876, 1966 (1) SCC 639, 1989 MPLSR 195, 1986 MPLJ 285 have been produced and it has been submitted that the workers working for long time should be regularised. It has also been argued that in case cross-examination has not been made on any question, it should be held undisputed. Judicial citation 2004 MPHT 16 has been produced in this regard. By citing the judicial citation 2001 (1) LLJ 569, it has been argued that direction to regularise the TSP workers should be given. Although facts of the said judicial citations are different to the facts of the present and is not applicable yet it is evident that present strength of the TSP employees is 16 to 18 in the light of the settlement Ex.D-2 employer should proceed to regularise them. This proceeding should be done as per the Clause no.9 of the settlement Ex.D-2. Because on behalf of the employer it has been stated that the said settlement is in force to this date.

With the above direction this reference case is disposed of. As the propriety of the relief sought in the Schedules of the Reference Case has not been established therefore answer to these Schedules is given in negative and case is rejected with the above direction. Parties to bear their respective costs."

Obviously, the Industrial Court could not have ignored the settlement on the subjects of dispute between the management and the Coordinating Committee arrived at on 20.10.1999 during the pendency of the reference which was binding on the appellant which was a party to the settlement and rightly directed the appellant to regularise the services of the remaining 16 to 18 TSP employees working in the undertaking of the appellant.

11. In fact, we find from para 13 of the impugned order dated 13.2.2006 of the learned single Judge in W.P. No.883/2004 that Shri Bhargava, learned counsel appearing for the appellant submitted before the learned Single Judge that under the industrial jurisprudence a statutory agreement arrived at under the Act should be preferred than an award passed by any Court with respect to any dispute and if any statutory agreement is arrived at under the Act, then the matter could be disposed of in accordance with the said agreement. The appellant thus appears to have relied on the settlement dated 20.10.1999 not only before the Industrial Court

in the reference but also before the learned Single Judge in the writ petition. The appellant also does not dispute that under clause 9 of the settlement appellant had agreed that 75 labourers of TSP would be regularised during the period of agreement. Therefore, the appellant cannot now take a stand that the direction in the order of the Industrial Court is a nullity and the direction in this regard in the impugned order passed by the learned Single Judge is liable to be set aside by the Court.

12. Moreover, the preamble of the Act indicates that the Act has been made to make provision for settlement of industrial disputes and Section 51 of the Act makes it clear that if an industrial dispute exists and it was not likely to be settled by other means, the government may refer the dispute or any other matter to be connected with or relevant to the dispute for arbitration to an Industrial Court. Thus, where a dispute is referred in accordance with Section 51 of the Act to the Industrial Court for arbitration by the Government and during the pendency of the reference a settlement of the industrial dispute is arrived at between the employer and the employees, the Industrial Court must give due weight to the terms of the settlement unless it is satisfied that the settlement was not just or fair or was vitiated by malafides or absence of consent of the parties to the dispute. The contention of the appellant that the direction in the order of the Industrial Court to the appellant to regularise the services of 16 to 18 TSP employees in terms of clause 9 of the settlement dated 20.10.1999 was beyond the jurisdiction of the Industrial Court and was a nullity is misconceived and the authorities cited by the appellant have no application to the facts of this case.

13. Mr. Rajendra Tiwari and Mr. Sanjay Verma finally submitted that at present there are only 16 TSP employees and out of these one Vidhyadhar Dubey has been dismissed for major misconduct after a legal domestic inquiry and his case is pending in this Court and out of the remaining 15 employees, 11 have deposed before the Industrial Court that they have not accepted the settlement dated 20.10.1999 and four have not come to depose before the Industrial Court and unless these 15 TSP employees comply with Clause 29 of the agreement and the order of this Court dated 30.11.2001 passed in W.P. No.6948/2000 they cannot be classified permanent. They further submitted that there is no vacancy at the plant at Keymore and the appellant is not in a position to supply extra manpower under the circumstances and hence the appellant should be given an option to compensate the TSP employees by making payment to them under Voluntary Retirement Scheme.

14. The settlement dated 20.10.1999 was a result of a bargain between the management and the representative of the employees on the basis of conditions as were prevailing at the time of the settlement and the direction of the Industrial Court for regularisation of the 16 to 18 TSP employees is on the basis of evidence led before the Industrial Court and has not been challenged by the appellant in a

writ petition. In the absence of such a challenge, we could only consider whether this direction of the Industrial Court was beyond its jurisdiction and was a nullity and we have held that the direction was within the jurisdiction of the Industrial Court and was not a nullity. Hence, we cannot set aside or modify the direction of the learned Single Judge to regularise the services of the 16 to 18 TSP employees, but the appellant may negotiate a fresh settlement with the concerned employees if it is so advised.

The appeal is dismissed. No costs.

Appeal dismissed.

I.L.R. [2008] M. P., 3082
WRIT PETITION
Before Mr. Justice Abhay M. Naik
6 May, 2008*

BHAVANI SHANKAR SHARMA ... Petitioner
Vs.
KESHRI SINGH CHOUHAN & ors. ... Respondents

Criminal Procedure Code, 1973 (2 of 1974), Section 340, Constitution, Article 226 - ***False statement in writ petition*** - *Petitioner filed first writ petition alleging that without deciding his application for amendment, the prescribed authority is proceeding with election petition - Petition disposed of by order dated 16.05.2007 with direction to decide amendment application - Second writ petition filed alleging that application has been rejected by order dated 20.04.2007 which is an antedated order - Held - Amendment application was filed on 04.05.2007 and was partly allowed on the same day and amendment was carried out by petitioner in his written statement - Petitioner has knowingly made false statement in order to gain undue favour - Registrar (Judicial) directed to send matter by making appropriate complaint to competent court for registering case.* (Para 14)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 340, संविधान, अनुच्छेद 226 – **रिट याचिका में मिथ्या कथन** – याची ने प्रथम रिट याचिका यह अभिकथन करते हुए पेश की कि उसका संशोधन का आवेदन विनिश्चित किये बिना विहित प्राधिकारी ने चुनाव याचिका में कार्यवाही की – याचिका आदेश तारीख 16.05.2007 द्वारा संशोधन आवेदन विनिश्चित करने के निदेश के साथ निपटायी गई – द्वितीय रिट याचिका यह अभिकथन करते हुए पेश की गई कि आवेदन आदेश तारीख 20.04.2007 द्वारा निरस्त कर दिया गया है जो पूर्वदिनांकित आदेश है – अभिनिर्धारित – संशोधन आवेदन 04.05.2007 को पेश किया गया और उसी दिन अंशतः मंजूर किया गया और याची द्वारा अपने प्रतिवाद पत्र में संशोधन समाविष्ट किया गया – याची ने अनुचित सहायता प्राप्त करने के लिए जानबूझकर मिथ्या कथन किये – रजिस्ट्रार (न्यायिक) को समुचित परिवाद सक्षम न्यायालय को मामला दर्ज करने के लिए भेजने का निदेश दिया।

*W.P. No.7456/2007 (Jabalpur)

Cases referred :

(2007) 5 SCC 602, (1992) 3 SCC 178, AIR 2001 SC 2204.

A.P. Singh, for the petitioner.
Manikant Sharma, for the respondent No.3.
G.P. Singh, G.A., for the respondent Nos.14 to 17.

ORDER

ABHAY M. NAIK, J. :–Petitioner was elected as Member of Jila Panchayat Hoshangabad. Respondent No.1 filed an election petition under Section 122 of M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993. During the trial, chief examination of the election petitioner was recorded in the Court of Additional Commissioner, Hoshangabad/Bhopal on 20.4.2007. Time for cross examination was sought on behalf of respondent No.1. Learned Additional Commissioner fixed the case for 4.5.2007 and directed both the parties to remain present for cross examination on the next date i.e. 4th May, 2007. Presence of other witnesses was also directed.

2. Case of the petitioner is that he on 20.4.2007 submitted an application under Order 6 Rule 17 C.P.C. Learned Additional Commissioner entertaining the election petition did not pass any order on the said application on 20.4.2007. Aggrieved by it, petitioner preferred W.P. No.5607/2007 before this Court wherein this Court on 16.5.2007 directed the Prescribed Authority to decide the petitioner's application under Order 6 Rule 17 C.P.C. and thereafter to proceed with the matter. Copy of this order is on record as Annexure/P-1. Petitioner further alleged that later on he came to know that his application under Order 6 rule 17 C.P.C. was rejected on 20.4.2007. He obtained certified copy of the order wherein it was mentioned that the rejection of the application under Order 6 Rule 17 C.P.C. was made on 20.4.2007.

3. Aforesaid was the gist of submissions of petitioner's learned counsel on 27.6.2007 when the case was listed on admission. This Court took it seriously which is evident from the following part extracted from the ordersheet of that day :-

> "Case of the petitioner is that an election petition is pending before Addl. Commissioner, Bhopal Division. An application was submitted by him for amendment under Order 6 Rule 17 C.P.C. on 20th April, 2007 (Annexure/P-3). The application was not dealt with by the learned Addl. Commissioner, instead, the case was fixed for 4th May, 2007 for cross examination of the election petitioner. W.P. No.5607/2007 was submitted before this Court. The Court directed on 16.5.2007 to decide the application for amendment.
>
> It is submitted by the petitioner on affidavit that the respondent No.17 passed an order on the application for amendment on the earlier ordersheet in an antedated manner. Respondent No.17 was directed

to decide the application for amendment by this Court on 16.5.2007 whereas it is contended that the application has been decided by respondent No.17 on the ordersheet dated 20.4.2007 by writing it on the ordersheet as having passed the order later on, on the same day. This is ex facie not only impermissible in law but it amounts to misconduct on the part of respondent No.17. The contents of writ petition are duly supported by affidavit and are equally accompanied by certified copy of the ordersheet dated 20.4.2007 issued on 23.4.2007."

Notices were accordingly issued and further proceedings were stayed.

4. Contention of the petitioner is that the application for amendment was rejected in antedated and a most mechanical manner. He further stated that in the earlier certified copy of the order dated 20.4.2007 there was no mention about the application for amendment whereas in the subsequent certified copy of ordersheet of the same date, the application under Order 6 Rule 17 C.P.C. is shown to have been rejected on 20.4.2007 itself in an antedated manner. Petitioner has placed an order of rejection on record as Annexure/P-4. It is contended by Shri A.P. Singh, learned counsel for the petitioner that rejection of various paragraphs proposed by way of amendment application is illegal and arbitrary. The proposed amendment was required due to subsequent events and the same ought to have been allowed in the interest of justice.

5. Respondent No.1 submitted his return refuting thereby the allegations of the petitioner. It is stated in the return that the petitioner has not only made false averments and disclosures before this Court but has also supported them by affidavit. It is contended that the petitioner has wrongly averred in paragraph 3(iv), 5.1 and 5.2 of the writ petition that the application for amendment was rejected whereas the same was partly allowed by the impugned order. Writ petition is obviously supported by affidavit. Secondly, it is contended that the petitioner on 16.5.2007 wrongly stated before this Court that no order on the application under Order 6 Rule 17 C.P.C. was passed by the Prescribed Authority who shall be directed to decide the application for amendment. This apart, it has been stated on merits that the evidence was partly recorded by the Prescribed Authority on 20.4.2007 and the ordersheet was duly dictated, prepared and signed by the learned Additional Commissioner. Matter was fixed for 4.5.2007. After closure of the ordersheet, the petitioner who was respondent No.1 in the election petition submitted an application under Order 6 rule 17 C.P.C. Arguments were heard on the same day and an order partly in favour of the petitioner was passed by the Additional Commissioner which was mentioned in the ordersheet itself as having occurred later on. Thus, it is contended that the application has rightly been decided and no interference is warranted.

6. Apart from the aforesaid, an application under Section 340 Cr.P.C. has also been submitted by respondent No.1 narrating therein various false statements

made in the writ petition as well as affidavits of respondent No.1. Accordingly, it has been stated that respondent No.1 has committed offence of perjury and is liable to be prosecuted. Petitioner submitted reply to interlocutory application under Section 340 of Cr.P.C. Dated 11.3.2008. Counter to the same has also been filed by respondent No.1. Respondent No.16 and 17 also submitted their return with certain documents.

7. Learned counsel for parties made their submissions extensively in respect of writ petition as well as application under Section 340 Cr.P.C. which have been considered in the light of material on record.

8. As regards rejection of amendment reliance has been placed by the petitioner on the decision of the Apex Court in the case of *Usha Balashaheb Swami and others Vs. Kiran Appaso Swami and others* (2007) 5 SCC 602. Accordingly, it is contended that the application for amendment was liable to be allowed in toto. Decision of *Usha Balashaheb Swami* (supra) clearly lays down that the Court is conferred with power, at any stage of the proceedings, to allow alteration and amendments of the pleadings if it is of the view that such amendments is necessary for determining the real question in controversy between the parties.

Apex Court in the case of Usha Balashaheb Swami (supra) has further clearly held that :-

> "The proviso to Order 6 Rule 17 C.P.C. provides that no application for amendment shall be allowed after the trial has commenced unless the court comes to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

In the present case the trial had already commenced whereas in the case of Usha Balashaheb Swami (supra) the trial had not commenced. This being so, the decision cited by the learned counsel Shri A.P. Singh cannot be invoked.

9. It is a trite law that amendment will have to be allowed in case, if, it is necessary for full and final adjudication of the controversy involved. Amendment proposed in the election petition is also to be viewed from the angle of election laws. Learned trial Judge while allowing a part of the amendment application and rejecting the remaining part thereof has clearly held that the amendment proposed vide paragraph 9(kha) is in the nature of repetition of averments. Other pieces of amendment proposed vide paragraph 9(ga) and (gha) were also not fond to be necessary since they have no bearing on the controversy involved in the election petition. The petitioner has not chosen to place on record copy of written statement to demonstrate that the rejected pieces of proposed amendment are not in the nature of repetition or are required to decide the controversy. Although, a copy of written statement is enclosed with the return, learned counsel for petitioner did not make effort to rebut the reasons assigned for rejection of amendment. Learned counsel for the petitioner has also been unable to

demonstrate that the rejected portion of amendment application is required for full and final adjudication of the election petition. After going through the pleadings, I do not find any infirmity in the finding of the learned Prescribed Authority that the proposed rejected amendment has no bearing on the election petition.

This being so, I do not find any merit in the writ petition and the same is consequently dismissed.

10. As regards application under Section 340 of Cr.P.C., I feel it convenient to reproduce sub-section (1) of Section 340 of Cr.P.C :-

> "(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in Clause (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such court may, after such preliminary inquiry, if any, as it thinks necessary,-
>
> (a) record a finding to that effect;
>
> (b) make a complaint thereof in writing;
>
> (c) send it to a Magistrate of the first class having jurisdiction;
>
> (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
>
> (e) bind over any person to appear and give evidence before such Magistrate."

11. Copy of the written statement submitted by the petitioner in the election petition is on record being annexed to the return of respondent No.16 and 17 (Annexure/R-1) which goes to show that paragraph 9(ka) was incorporated in the written statement on 4.5.2007. This amendment was incorporated in pursuance of the order of the Prescribed Authority made on 4.5.2007 itself. Thus, the petitioner very well knew that the application for amendment was decided and partly allowed. Despite this, it appears that the petitioner in order to gain undue favour, on 16.5.2007 (in W.P. No.5607/07) as well as on 27.6.2007 (in present writ petition) made a wild allegation before this Court that no order on application for amendment was passed and the learned Prescribed Authority was proceeding with the trial of the election petition without deciding the application for amendment. This is clearly an incorrect and false statement made by the petitioner deliberately despite having knowledge of allowing the amendment and incorporation thereof on 4.5.2007. This apart, it may be seen that the petitioner averred in paragraphs 3(iv), 5.1 and 5.2 of the writ petitioner that his application for amendment was

rejected whereas the same was not rejected but was partly allowed. Additionally, petitioner has made an allegation that the Prescribed Authority did not pass the order on 20.4.2007 on his application under Order 6 Rule 17 C.P.C. On perusal, it may be seen from Annexure/R-1, that the application for amendment was submitted on 20.4.2007. From the ordersheet dated 20.4.2007, it appears that the chief examination of the election petitioner was recorded and time was sought for his cross examination. Case was fixed for 4.5.2007 and the entire ordersheet was written and signed by the Prescribed Authority. In the margin of the ordersheet, signature on behalf of respondent No.1 is there. Learned counsel admitted that signature on behalf of respondent No.1 was put in the margin of the ordersheet. Although there was no mention till then in the ordersheet about the application for amendment but the signature on behalf of parties to the election petition were put without any objection having been raised about the absence of mention with regard to amendment application. Ordersheet dated 20.4.2007 is extended by continuing as 'later on'. In the 'later on' portion of ordersheet dated 20.4.2007 there is a mention of application for amendment having been filed and heard. This was clearly mentioned in the ordersheet dated 20.4.2007 as 'later on proceedings'. On the last page of 'later on proceedings' dated 20.4.2007, ordersheet dated 4.5.2007 was written wherein it was clearly mentioned that the learned counsel on behalf of petitioner participated in proceedings and performed cross examination. On this very day (i.e. 4.5.2007), the amendment was incorporated in the written statement as revealed in Annexure/R-1. Had there been any adjudication of application for amendment in an antedated manner, the petitioner could have and would have objected to it before the incorporation of amendment or atleast on the same day. No such objection was raised and it seems that the allegation has been made against the Prescribed Authority in a mischievous manner as an afterthought with an ulterior motive of gaining undue advantage from this Court. The allegations levelled by the petitioner do not receive support from the drift of events and are found to be false within the knowledge of petitioner himself.

12. Shri A.P. Singh, learned counsel contended that the certified copy marked as Annexure/P-4 does not contain a mention about the application for amendment and its disposal. On perusal, it is found, firstly, that it is not a certified copy but a photocopy of certified copy. Secondly, it does not contain the dates and seal of copying section so as to ascertain that on what date the application was submitted and on what date it was issued. In the absence of any such seal about the dates of application, preparation of certified copy and delivery thereof, Annexure/P-4 cannot be treated as an authentic complete document. Moreover, the petitioner would have definitely objected on 4.5.2007, had there been any antedated order in respect of his application under Order 6 Rule 17 C.P.C.

13. Shri A.P. Singh, learned counsel contended that the application under Section 340 Cr.P.C. being not supported by affidavit is liable to be rejected. The words

employed in sub-section (1) of Section 340 Cr.P.C. go to suggest that it is objective satisfaction of the Court whereupon necessary order under Section 340 may be made. Supportive material in the present case is the ordersheet of this Court and certified copies of various ordersheets and documents. This being so, the absence of affidavit will not be fatal to the application under Section 340 of Cr.P.C, moreso, when the Court itself is also otherwise empowered to form an opinion that an offence referred to in Section 340 appears to have been committed and interest of justice requires an enquiry contemplated under Section 340 of Cr.P.C.

14. Next reliance has been placed by Shri A.P. Singh, learned counsel on the decision of the Supreme Court in Criminal Appeal No.631 of 1990 *K.T.M.S. Mohd. and another Vs. Union of India* (1992) 3 SCC 178. He referred to following paragraphs :-

> "36. The above provisions of Section 340 of the Code of Criminal Procedure are alluded only for the purpose of showing that necessary care and caution are to be taken before initiating a criminal proceeding for perjury against the deponent of contradictory statements in a judicial proceeding."
>
> 37. The mere fact that a deponent has made contradictory statements at two different stages in a judicial proceeding is not by itself always sufficient to justify a prosecution for perjury under Section 193 IPC but it must be established that the deponent has intentionally given a false statement in any stage of the 'judicial proceeding' or fabricated false evidence for the purpose of being used in any stage of the judicial proceeding. Further, such a prosecution for perjury should be taken only it it is expedient in the interest of justice."

In the case in hands it is found that the petitioner has knowingly made the false statement in order to gain undue favour. Apex Court in the case of *K.T.M.S. Mohd.* (supra) has held that merely on the basis of contradictory statements, section 340 cannot be invoked to justify a prosecution for perjury. In the present case statements made by the petitioner are found to be false within the knowledge of the petitioner himself and are not merely contradictory. This being so, this Court is of the opinion that a case under Section 340 Cr.P.C. is made out.

15. Before parting with the case, I feel it proper to profitably refer to Hon'ble Supreme Court's decision in the case of Re : Suo Moto Proceedings against *Mr. R. Karuppan, Advocate* (AIR 2001 SC 2204) wherefrom strength is being derived for issuing necessary direction.

> "In India, law relating to the offence of perjury is given a statutory definition under Section 191 and Chapter XI of the Indian Penal code, incorporated to deal with the offences relating to giving false evidence against public justice. The offences incorporated under this Chapter are based upon recognition of the decline of moral values and erosion of sanctity of oath. Unscrupulous litigants are found daily resorting to

utter blatant falsehood in the Courts which has, to some extent, resulted in polluting the judicial system. It is a fact, though unfortunate, that a general impression is created that most of the witnesses coming in the Courts despite taking oath make false statements to suit the interests of the parties calling them. Effective and stern action is required to be taken for preventing the evil of perjury, concededly let lose by vested interest and professional litigants. The mere existence of the penal provisions to deal with perjury would be a cruel joke with the society unless the Courts stop to take an evasive recourse despite proof of the commission of the offence under Chapter XI of the Indian Penal Code. If the system is to survive, effective action is the need of the time. The present case is no exception to the general practice being followed by many of the litigants in the country."

16. It is really surprising that the petitioner despite knowing fully well about allowing the amendment in part and incorporating amendment to that effect on 4.5.2007, made before this court through his lawyer on 16.5.2007 as well as 27.6.2007 incorrect wild allegations against the presiding officer (learned Additional Commissioner, Hoshangabad/Bhopal) that amendment application was not decided until 16.5.2007.. He did not choose to withdraw the petition and instead pressed the aforesaid contentions which are contrary to the ordersheet Annexure/P-2 read with Annexure-R1/4 (it is a certified copy of written statement containing part of amendment proposed vide amendment application dated 20.4.2007 and incorporated on 4.5.2007). Thus, an offence under Chapter XI of I.P.C. specially under Sections 191, 199, 200 and 209 thereof appears to have been committed by the petitioner.

17. Attention of Additional Commissioner is drawn to the order of learned Division Bench passed on 20.3.2007 in W.A. No.1078/2006. Accordingly, adjudication of the election petition is required to be made within two months. However, it is made clear that learned Additional Commissioner shall not get influenced by any of the observations made in this order and shall decide the election petition in accordance with law on the basis of material before it.

18. In the result, W.P. No.7456/07 is hereby dismissed with costs of Rs.2000/-.

Application under Section 340 Cr.P.C. is hereby allowed. Accordingly, Registrar (Judicial) is directed to send the matter by making an appropriate complaint to the Court having competent jurisdiction at Jabalpur for registering a case under appropriate provisions of Chapter XI of I.P.C. including Sections 191, 199, 200 and 209 thereof for trial against the petitioner in accordance with law.

It is made clear that the Court trying the complaint shall have power to add any other person in accordance with law if he is found involved and guilty on the basis of material on record.

C.c. as per rules.

Petition dismissed.

I.L.R. [2008] M. P., 3090
WRIT PETITION
Before Mr. Justice Dipak Misra & Mr. Justice S.C. Sinho
26 June, 2008*

VINOD KUMAR (DR.) ... Petitioner
Vs.
STATE OF M.P. & ors. ... Respondents

A. Medical Council Act (102 of 1956), Sections 10A & 11(2), Pre P.G. Entrance Examination for Medical & Dental Post Graduate Courses, 2008, Medical and Dental Post Graduation Course Entrance Examination Rules, M.P. 2008 - ***Admission*** *- Petitioner applied for admission in P.G. course as a service candidate - Counselling for unrecognized seats not done in compliance of learned Single Judge order - Action challenged that counselling of the unrecognized seats is done for last many years and the order of learned Single Judge has been dislodged in the Writ Appeal - Held - Filling of unrecognized seat without proper infrastructural facilities is not permissible in view of rules made by Medical Council of India - It is the Medical Council / Dental Council which can prescribe the number of students to be admitted to medical/dental courses in a medical college or institution - The universities and the State Government have no authority to allow increase in the number of admissions in the medical colleges - The Medical Council is the principal body to lay down conditions for recognition of medical colleges which would include the fixing of intake for admission to a medical college.* (Para 17 to 20)

क. **चिकित्सा परिषद् अधिनियम (1956 का 102), धाराएँ 10ए व 11(2), चिकित्सा और दंत स्नातकोत्तर पाठ्यक्रमों के लिए पूर्व स्नातकोत्तर प्रवेश परीक्षा, 2008, चिकित्सा और दंत स्नातकोत्तर पाठ्यक्रम प्रवेश परीक्षा नियम, म.प्र. 2008 –** प्रवेश – याची ने सेवा अभ्यर्थी के रूप में स्नातकोत्तर पाठ्यक्रम में प्रवेश के लिए आवेदन किया – विद्वान एकल न्यायाधीश के आदेश के अनुपालन में अमान्यताप्राप्त सीटों के लिए काउंसिलिंग नही की गई – कृत्य को चुनौती दी गई कि अमान्यताप्राप्त सीटों की काउंसिलिंग पिछले कई सालों से की गई है और विद्वान एकल न्यायाधीश के आदेश का रिट अपील में विस्थापन कर दिया गया है – अभिनिर्धारित – भारतीय चिकित्सा परिषद् द्वारा बनाये गये नियमों को दृष्टि में रखते हुए समुचित अवसंरचनात्मक सुविधाओं के बिना अमान्यताप्राप्त सीट का भरना अनुज्ञेय नही है – चिकित्सा परिषद्/दंत परिषद् चिकित्सा महाविद्यालय या संस्थान में चिकित्सा/दंत पाठ्यक्रमों में प्रविष्ट किये जाने वाले छात्रों की संख्या विहित कर सकती है – विश्वविद्यालय और राज्य सरकार को चिकित्सा महाविद्यालयों में प्रवेश की संख्या में वृद्धि की अनुमति देने का कोई प्राधिकार नही है – चिकित्सा महाविद्यालयों की मान्यता के लिए शर्तें निर्धारित करने के लिए चिकित्सा परिषद् प्रमुख निकाय है जिसमें किसी चिकित्सा महाविद्यालय में प्रवेश के लिए ग्रहण नियत करना सम्मिलित होगा।

B. Medical and Dental Post Graduate Course Entrance

*W.P. No.6735/2008 (Jabalpur)

Examination Rules, M.P. 2008 - *If any seat falls vacant on or before 31st May, 2008 in any Medical/Dental College in any subject, the name of such candidate shall be considered on the basis of merit at the time of allotment of vacancies arising due to any reason for admission of the said category - None of the petitioners had availed "opt for waiting" - Hence, there cannot be any grievance.* (Para 25)

चिकित्सा और दंत स्नातकोत्तर पाठ्यक्रम प्रवेश परीक्षा नियम, म.प्र. 2008 – **प्रवेश** – यदि किसी चिकित्सा/दंत महाविद्यालय में 31 मई 2008 को या उससे पूर्व किसी विषय में कोई सीट खाली रहती है, तो उक्त श्रेणी के प्रवेश के लिए ऐसे अभ्यर्थी के नाम पर किसी कारण से हुई रिक्तियों के आबंटन के समय मेरिट के आधार पर विचार किया जायेगा – किसी भी याची ने "प्रतीक्षा के विकल्प" का लाभ नहीं उठाया – इसलिए कोई शिकायत नही हो सकती है।

Cases referred :

AIR 1998 SC 2423, AIR 1999 SC 2899, ILR [2007] MP 178, W.P. No.2943/2004, W.A. No.299/2008.

Aditya Sanghi, for the petitioner.

Deepak Awasthy, G.A., for the respondent Nos.1 & 2.

Indira Nair with *Jasmeet Chana,* for the respondent No.3.

ORDER

The Order of the Court was delivered by **DIPAK MISRA, J. :–** Regard being had to the commonality of challenge in these writ petitions they were heard analogously and are disposed of by a singular order. Mr.Aditya Sanghi, learned counsel for the petitioner, has referred to the facts in W.P.No.6735/2008 and in view of that, the factual matrix of the said writ petition is frescoed.

2. The petitioner as an in-service candidate appeared in the Pre P.G. Entrance Examination for Medical & Dental Post Graduate Courses, 2008 conducted by the M.P. Professional Examination Board (hereinafter referred to as 'the Board'). The result of the petitioner has been brought on record as Annexure-P-3. It is contended that 20% seats are reserved for in-service category of students. The prospectus has mentioned 308 seats to be filled up out of which approximately 60 seats were mentioned as unrecognized seats which pertained to Degree courses and Diploma courses. Names of various colleges are mentioned in the prospectus showing the unrecognized Degree seats and unrecognized Diploma seats. It is putforth that there are certain seats which are neither in the recognized category nor in the unrecognized category. Though the said unrecognized seats were mentioned in the prospectus, a notification was issued on 23.5.2008 by the respondent No.2, the Director, Medical Education that the seats which are not recognized or which have been derecognized by the Medical Council of India would not be included in the counselling. It is pleaded that in respect of the unrecognized seats, the State Government has been allotting them to meritorious

students so that they get the degree. It is putforth that the seats which are unrecognized by the Medical Council of India should have been included in the counselling so that the seats would not have gone waste. It is also averred that the counselling has been conducted without waiting for the reversion of All-India quota seats and the counselling could have been done on 5-6-2008. It is urged that by such non-inclusion of the unrecognized seats and the seats which have been reverted from the All-India quota, the petitioner has been deprived of the admission and has suffered at the hands of the respondents. In this backdrop, a prayer has been made to issue a writ of mandamus commanding the respondents to conduct fresh counselling in respect of the seats that have been reverted from All-India quota and unrecognized seats and further to command the respondents to allot unrecognized and derecognized seats of the Medical Council of India to the likes of the petitioner as the said practice has been in vogue for long.

3. A counter affidavit has been filed by the answering respondents No.1 & 2 contending, inter alia, that there are 300 seats for P.G. Course and out of the said 300 seats, 239 seats have been earmarked for non service candidates and 60 seats have been year marked for in-service candidates. In W.P.No.2943/2004 (Dr.Om Prakash Lakhwani Vs. State of M.P. and others) decided on 13.5.2008, the learned Single Judge had directed the respondent-State not to admit any student in future against any course which is not recognized by the Medical Council of India in a particular institution. The Rules, namely, M.P. Medical and Dental P.G. Entrance Examination Rules, 2008 (for short 'the Rules') were published in the Gazette and in the said Rules, distribution of seats in different categories was shown in the Table appended thereto. It is putforth that in compliance of the said order of the learned Single Judge of the Gwalior Bench passed in the writ petition, the State Government excluded the unrecognized seats for the purpose of counselling and as the same has been done in compliance with the direction passed by the High Court, no fault can be found with the respondents. It is pleaded that in relation to the All- India quota seats the Apex Court in W.P.(Civil) No.157/2005 (Amit Gupta Vs. Union of India) has directed that the counselling shall be completed between 24th to 30th May, 2008 and thereafter the second round of the said counselling was extended for a period of ten days, i.e., 10.6.2008. The Director General of Health Services, Government of India completed the counselling by 30.5.2008 and seven days' time had been granted for the All-India quota candidates for taking admission. The seats could only be available to the State Government by 07.6.2008 as is clear from the letter dated 22.5.2008 passed by the Director General of Health Services. In view of the aforesaid, the second round of counselling was scheduled to be held from 08.6.2008 to 10.6.2008 for the seats reverted from the All-India quota. The stand that in the All-India counselling unrecognized seats are being allotted has been seriously disputed. The stand that certain seats are not mentioned in the column of seats has also been disputed by stating that no specific pleading has been made.

4. We have heard Mr.Aditya Sanghi, learned counsel for the petitioner, Mr.Deepak Awasthy, learned Government Advocate for the respondents No.1 & 2 and Mrs.Indira Nair, learned senior counsel alongwith Ms.Jasmeet Chana for the respondent No.3.

5. Mr.Sanghi, learned counsel for the petitioner has raised the following contentions:-

(a) The action of the respondents in not including the unrecognized seats in the counselling is totally improper as the same has been in practice for many a year. It is urged by him that the order passed by the learned Single Judge in W.P.No.2943/2004 has been dislodged in W.A.No.299/2008 and, therefore, it is incumbent on the part of the respondents to fill up the unrecognized seats or the derecognized seats in all the Colleges by second round of counselling.

(b) The respondents No.1 and 2 have fallen into grave error by holding the counselling of All- India quota seats that have been reverted on 08.6.2008 as a consequence of which the likes of the petitioners have been deprived of admission to the course. The said counselling could have been held much earlier as a consequence of which the petitioner would have been in a position to participate in the counselling.

(c) The prospectus and the list of recognized and unrecognized students do not show either of the two categories in respect of certain seats as a consequence of which the petitioner could not get admission.

6. Mr.Deepak Awasthy, learned Government Advocate, resisting the aforesaid submission of Mr.Sanghi, canvassed that the State and its functionaries were bound by the order of the learned Single Judge and accordingly they did not include the unrecognized seats in the counselling and, therefore, no fault can be found with it. It is proponed by him that the seats in the All-India quota were only to be reverted on 07.6.2008, therefore, the State Government could not have conducted the counselling before the said date. Heavy reliance has been placed on the decision rendered in the case of *Amit Gupta* (supra). It is argued by Mr.Awasthy that in view of the order passed in the writ appeal, the State shall take appropriate steps and, therefore, spacious plea that the State has not taken effective steps is sans substratum. It is propounded by the learned Government Advocate that the submission that some seats have been shown as unrecognized at one place and as recognized at some other place is not clear and is, in fact, a figment of imagination of the petitioner and hence, liable to be rejected.

7. Mrs.Indira Nair, learned senior counsel alongwith Ms.Jasmeet Chana appearing for the Medical Council of India, submitted that the State Government cannot fill up the unrecognized seats without the infrastructure, staff faculty and prior permission of the Medical Council of India. It is contended by her that the order passed in the writ appeal deserves to be reconsidered by a larger bench and

if this Court is not inclined to refer to the larger bench, then the same has to be read in the context in which it has been delivered and it has to be construed to mean that it relates to G.R.Medical College and the seats unrecognized in the said College, but not the unrecognized seats in all other colleges. It is propounded by her that the State Government is bound by the Medical Council of India Act and the Regulations framed by it and hence, the unrecognized seats cannot be filled up as that would mar the career of the meritorious students who may eventually get a degree from the University without proper imparting of objective and specific training.

8. To appreciate the submissions raised at the Bar, it is proper to refer to paragraph 20 of the order passed by the learned Single Judge in W.P.No.2943/2004 which reads as under:-

> "20. It is not disputed that there are number of courses which are not recognized by the Medical Council of India. Students are admitted to such courses as per the allotment made by the Director of Medical Education in spite of the fact that the Director of Medical Education is fully aware of the fact that said courses are not recognized by the Medical Council of India. Medical Council of India and the Madhya Pradesh Medical Council are also watching this illegality for number of years as silent spectators and thus all these Authorities are playing with the career of the students which cannot be permitted to be done. If the Medical Council of India and Madhya Pradesh Medical Council permitted to watch the game as silent spectators and continue the illegality in admissions, then the very purpose of establishing these Authorities will be frustrated. In such a situation, it is for the aforesaid Authorities to see that in future, no candidate is allotted seat in post graduate degree course in the Institutions which are not recognized. Therefore, they are directed not to admit any student in future any course which is not recognized by the Medical Council of India in a particular Institution."

9. Against the aforesaid order, Writ Appeal No.299/2008 was preferred. The Division Bench noted the contentions of the learned counsel for the parties. Before the Division Bench, a statement was made by the Medical Council of India that the request for recognition could not be considered for want of meeting of the Medical Council of India and further the College, namely, G.R.Medical College, Gwalior had not fulfilled the requirement and had not appointed adequate teaching staff as required by the Medical Council of India. Thereafter, the Division Bench directed as follows:-

> "After hearing the learned counsel for the parties, we have observed that because of non grant of recognition by M.C.I., this year, students could not be admitted in the PG degree course as well as in diploma

course which is a great loss to the public. We have observed that up till now the M.C.I. has not regularized the provisional recognition granted way back in the year 1978. Therefore, it would be in the interest of justice to direct the M.C.I. to consider the case of G.R. Medical College, Gwalior for grant of recognition. When favourable report is available on record, the M.C.I. can grant recognition to the college for this court to admit two Post Graduate candidates and three diploma candidates. It is directed that the M.C.I. for this course as well as for all other courses and also for grant of recognition to college will take decision positively within a period of thirty days from today. After recognition is granted to the college, the State shall have liberty to give admission in the courses. It is made clear that thereafter within further thirty days period, the seats shall be filled by the State through counselling. The Govt. shall ensure that no seat shall go in waste in any year in any particular faculty. It is further directed that in future, the M.C.I. shall decide the applications of all govt. colleges for recognition well in time positively within a period of three months and if it is found that there are deficiencies in the Govt. colleges, the direction shall be issued to rectify the deficiencies within the allotted period. It is further directed that the State shall make all efforts to rectify the deficiencies within the allotted time without fail, so that there may not be any delay in granting recognition or permissions. The State Government shall also be free to fix responsibility of the officer concerned for not complying the norms or removing the deficiencies timely. If the medical colleges are not upgraded as per requirement of M.C.I. the Government shall be responsible for not upgrading colleges as well as for the loss caused by not appointing the adequate staff and for not providing necessary infrastructure as required by the M.C.I. and shall also be responsible for the loss of education to the students and for not providing medical facilities to the public at large. The question of education and health is part of life guaranteed by Article 21 of the Constitution of India under the concept of welfare state. Therefore, it is the duty of the govt. to provide adequate facilities for health and education to the citizens".

10. At this juncture, it is worth noting that this Court on 23.6.2008 taking note of Section 11(2) of the Indian Medical Council of India Act, 1956 had passed the following order:-

"Though many a grievance has been agitated in these writ petitions, the primary and principal issue which requires to be addressed in quite promptitude, as the same cannot be brook any delay, is whether the State Government can fill up unrecognized seats. We may note with profit that a minor cavil was raised by Mr.Sanghi, learned counsel for the petitioners and Mr.Deepak Awasthy, learned Government Advocate

for the State that the seats which have been shown as unrecognized in the prospectus and that have been shown in the Gazette Notification there is some kind of anomaly. The said issue need not be dwelled upon in praesenti.

Mrs. Indira Nair, learned senior counsel appearing for the Medical Council of India after referring to Section 11(2) of the Indian Medical Council of India Act, 1956 (for short 'the Act') submitted with all fairness that if the State Government undertakes to fulfill the deficiencies and complete the infrastructural base and staff position, within a span of one year, the unrecognized seats can be filled up and the MCI shall be in a position to include the said courses which have not been conferred the status of recognized courses in the First Schedule to the Act.

Mr.Deepak Awasthy, learned Government Advocate, stated that the State Government would fulfill the deficiencies within that span but the M.C.I. should grant permission to fill up the seats so that the seats do not go waste and students do not suffer.

At this stage, it is submitted at the Bar that initial course of P.G. Course is of general nature and, therefore, grant of one year would not really affect the imparting of education. Mrs. Nair shall obtain instructions, specifically and exclusively to this aspect by tomorrow. The writ petitions shall be heard at 4.00 p.m. tomorrow, i.e., 24.6.2008.

Let a free copy of the order be handed over to Miss Jasmeet Chana, learned counsel, who is assisting Mrs.Indira Nair by the Registrar (Judicial) in course of the day."

11. In pursuance of the aforesaid order, Mrs.Indira Nair, learned senior counsel, has obtained instructions wherein the Medical Council of India had referred to its earlier communication to the counsel which is as follows:-

"That the admissions to medicine courses is the primary responsibility of the competent admitting authorities which is in accordance with the directions of the Hon'ble Supreme Court issued from time to time. The MCI is required to ensure that the admissions in all the medical courses by the competent admitting authorities are made only in the medicine courses recognized/ permitted by MCI and within the annual intake capacity sanctioned for each medical college and are within the time schedule prescribed under the Regulations. MCI is required to ensure that no admissions are made in any unrecognized course thereby ensuring that no prejudice/hardship is caused to the meritorious students.

It is further submitted that each medical college is obliged to provide the minimum required infrastructural, teaching and other physical facilities for running each of the medicine course in terms of the MCI's

regulations. If deficiencies have been pointed out to the college authorities by the MCI, the college is obliged to furnish compliance with the deficiencies pointed out to it and report compliance with the deficiencies after rectification of the same."

12. A decision of the Bombay High Court in P.I.L. No.41 of 2008 has also been referred to in the said communication. It is highlighted that training in the specialized branch of medicine starts from the 1st year itself. Emphasis has been laid on the fact that no admission can be granted unless recognition is granted by MCI, as by such an act no prejudice is caused to the meritorious students. The said letter has been taken on record on the consent of the learned counsel for the parties.

13. In this context, we may refer with profit to Section 10A of the 1956 Act which deals with the permission for establishment of new medical college, new course of study. It stipulates that notwithstanding anything contained in this Act or any other law for the time being in force no medical college shall open a new or higher course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognized medical qualification except with the previous permission of the Central Government obtained in accordance with the provisions of this section. Procedure has been provided in various sub-sections. Section 10B deals with non-recognition of medical qualifications in certain cases. The said provision postulates that where any medical college is established except with the previous permission of the Central Government in accordance with the provisions of Section 10A, no medical qualification granted to any student of such medical college shall be recognized as medical qualification for the purposes of this Act.

14. Section 11 of the Act deals with recognition of medical qualifications granted by Universities or medical institutions of India. Sub-section (2) of Section 11 provides that any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognized, and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognized medical qualification only when granted after a specified date.

15. We have referred to the said provisions only to highlight that fundamentally there is no concept of non-recognized seats. The High Court of Bombay in P.I.L. No.41/2006 took note of the fact that the State Government had already initiated the process of getting recognition from the M.C.I. and the procedure prescribed for making an application through the University to the Central Government had been followed. Hence, it is directed that the Central Government would take the necessary steps. Before the Bombay High Court, an affidavit was filed by the

Joint Director of Health showing recognized and unrecognized courses and availability of seats. The bench took note of the fact that 113 seats of degree courses are not recognized by the MCI and 81 seats for diploma courses are not recognized and thereby 194 seats in all have been shown as not recognized by the Medical Council of India. Be it noted, an interim order passed by the High Court of Bombay in P.I.L. No.41/2006 on 28.5.2008 has been brought on record. In the said case, the State Government has filed affidavits and had clarified the position that inspection team has already completed 23 courses and with regard to 12 courses the inspection team is under way. Accepting the said statements the Bench directed as under:-

> "5. The anxiety of petitioners and the students as far as current academic year is concerned, has been dealt with in para 7 of this affidavit and it is stated that the Principal Secretary, Department of Medical Education and Drugs, Government of Maharashtra has issued directions so also draft of proposed circular wherein the Government of Maharashtra has decided to admit students to the P.G. Course to which admission process has been initiated. We are informed by Mr.Naik on instructions from the concerned officers that 194 seats which are not recognized by MCI and, therefore, could not form part of the first phase of the admission process would now be included in the admission process and the admission thereto would be made in accordance with the rules framed in that behalf.
>
> 6. Such a circular would be issued for information of all concerned and the deadline which has been prescribed in the decision of Hon'ble Supreme Court in the case of *Mrudal Dhar and Anr. Vs. Union of India and Ors.* reported in A.I.R. 2005 SC 666 will be adhered to and the seats which are now referred to in this affidavit would form part of the admission process which would be completed by 31st May 2008. It is made clear that 31st May 2008 is taken as a date on the basis of the arguments canvassed before us and if any extension is given insofar as cut off date is concerned, then, needless to state that the same shall be applicable.
>
> 7. xxx xxx xxx
>
> 8. Needless to further add that the above statements which are recorded and the affidavits so also the position emerging therefrom would be subject to such other and further directions and orders as may be issued by the regular court. Mr.Naik states that the concerned authorities will issue appropriate clarifications so that the students are aware that some of the seats to which they have applied for admission are not recognized as yet by the MCI."

16. It is worth noting that in respect of G.R.Medical College, Gwalior it is

reflected from the communication which has been taken on record it has been stated as follows:-

> ".....It is further submitted that the inspection has been conducted by the Council inspectors in April 2008 and the inspection report has been placed before the PG Committee for consideration and its meeting held on 12.6.2008 (now adjourned to 2nd July 2008). The decision of the PG Committee upon approval by Chairman will be communicated immediately thereafter to the concerned authorities."

17. In this context, we may refer with profit to a two-Judge Bench decision rendered in *Medical Council of India Vs. State of Karnataka,* AIR 1998 SC 2423 wherein it has been held that it is the Medical Council/Dental Council which can prescribe the number of students to be admitted to Medical courses/Dental courses in a medical college or institution. The Universities and the State Government have no authority to allow increase in the number of admissions in the medical colleges. The Medical Council is the principal body to lay down conditions for recognition of medical colleges which would include the fixing of intake for admission to a medical college. Their Lordships in the said case have laid emphasis on Sections 10A, 10B and 10C of the M.C.I. Act.

18. In the case of *Preeti Srivastava Vs. State of Madhya Pradesh,* AIR 1999 SC 2899, the Constitution Bench had also given primacy to the Medical Council of India. In the case at hand, as is unmistakably clear, the seats are unrecognized. The order passed in the writ appeal, as we understand, would only apply to the G.R.Medical College, Gwalior. It cannot apply to all the colleges.

19. There is nothing on record that the State Government has taken steps for asking for recognition of courses by providing infrastructural staff and other facilities. Thus, the decision by the Bombay High Court is distinguishable, the factual matrix being quite different.

20. In view of the aforesaid, we are of the considered opinion that the direction of filling of unrecognized seats at this juncture in respect of other colleges does not arise.

21. The second aspect that requires to be considered is whether counselling of All-India Quota should have been held on 8-6-08 or should have been deferred. Submission of Mr. Aditya Sanghi, learned counsel for the petitioner, is that it should have been held on 5-6-08 so that students could have participated. Learned counsel for the petitioner submitted that after all the seats were made available then only a counselling could have been held.

22. Controverting the aforesaid submission it is put forth by Mrs. Indira Nair, learned Senior Counsel appearing for the Medical Council of India, and Mr. Deepak Awasthi, learned Govt. Advocate for the State, that in the present year there were certain directions by this Court and further the Apex Court in the case of

Amit Gupta and others (supra) had extended the time and permitted second round of counselling. To appreciate the said aspect, it is seemly to reproduce the order passed by their Lordships in the case of *Amit Gupta and Ors.* (supra). The said order reads as under:

> "As per the schedule approved for conducting the counselling for admission to the post-graduate Medical/Dental courses for the All India Quota as well as State Quota, we had fixed the 15th April as the last date for first round of counselling for the State Quota. It is submitted by the learned Additional Solicitor General that in the States of Madhya Pradesh, Punjab, Rajasthan, Tamil Nadu, Bihar and Jharkhand the first round of counselling for admission to the State Quota was not completed by 15-04-2008 and that the details are not available. Consequently DGHS is facing difficulty in completing the second round of counselling for All India Quota, for which the last date is 9th May. It is stated that unless the first round of counselling of State Quota is completed, it is not possible to complete the second round of counselling for re-allocation of seats and allotment of seats from waiting list.
>
> In the above circumstances, we direct the Director of Medical Education/Chief Secretary/Director of Entrance Examination in the States of Madhya Pradesh, Rajasthan, Tamil Nadu, Bihar and Jharkhand to send the particulars of the first round of counselling for admission to State Quota to the DGHS, Government of India, before 10th May, 2008. The admissions to All India Quota DGHS in respect of the remainder of the second round of counselling is permitted to be held between 24th May to 30th May, 2008. Correspondingly, the second round of State counselling would stand extended for a period of ten days and they may complete the second round of counselling and admission by 10th June, 2008.
>
> All students who are eligible to participate in the second round of counselling may be given an opportunity to participate in the extended period of second round of counselling.
>
> Henceforth, Director of Health Services of the respective States shall ensure that the time schedule fixed by this Court for State Quota is followed strictly and first round of counselling shall be completed within the time frame fixed and the the details be furnished as fixed."

23. Mr. Awasthi, learned Govt. Advocate, has also referred us to the communication dated 22-5-08 issued by the Assistant Director General (ME) of Directorate General of Health Services (Medical Examination Cell). It is essential to reproduce the said letter in toto:

> "As you are aware that the Extended 2nd round of Counselling for allotment of Post Graduate (Medical/Dental) seats under 50% All

India Quota- 2008 is being held from 24th May to 30th May, 2008 in compliance to the directions of the Hon'ble Supreme Court dated 2nd May, 2008 passed in T.A. No.17 in Writ Petition (Civil) No.157/2005 (Dr. Amit Gupta & Ors vs. UOI & anr.). The Hon'ble Court had also extended the last date of 2nd round of State Counselling by 10 days and to complete both the State Counselling and admissions by 10th June, 2008. In this connection this Directorate's letter of even number dated 2nd May, 2008 and 8th May, 2008 refers.

2. The All India Quota candidates who will be re-allotted seats during this Extended 2nd round of Counselling are being given 7 days time to join the respective colleges/Institutes from the date of issue of allotment letter. Thereafter, the seats remaining vacant on account of non-joining/non-allotment may please be treated as deemed surrendered back to State Quota.

3. You are, therefore, requested to schedule the 2nd round of State P.G. Counselling so that the admissions are complete by 10th June, 2008 as per the aforesaid directions of the Hon'ble Supreme Court."

24. On a perusal of the aforesaid letter, it is clear as day that the seats could only be treated as surrendered back to State quota after expiry of seven days time granted to the candidates to join in the respective allotted colleges/institutes. In view of the aforesaid, holding of counselling from 8-6-08 to 10-6-08 cannot be found fault with.

25. The aforesaid situation can be looked from another angle. The petitioner has made a claim that the future of candidates who could have got better subjects has been marred because of holding of counselling at a later stage and in respect of All- India Quota seats and holding of Counselling of State seats earlier. In this context, we may profitably refer to Rule 20(15) of the Madhya Pradesh Medical and Dental Post Graduate Course Entrance Examination Rules, 2008 which provides that if any candidate who does not wish to be admitted to any of the subjects/courses available at the time of his/her counselling, he/she may give "opt for waiting" option in writing and his/her name will be placed in the waiting list in the order of merit. If any seat falls vacant on or before 31st May, 2008 in any Medical/Dental Colleges in any subject, the name of such candidate shall be considered on the basis of merit at the time of allotment of vacancies arising due to any reason for admission of the said category. None of the petitioners had availed "opt for waiting". Hence, there cannot be any grievance.

26. Judged from both the angles, the aforesaid contention is without any substance.

27. The last plank of submission of Mr. Sanghi is that there had been misplacement of recognized and un-recognized seats in the prospectus and in the

Gazette Notification and an anomaly has been caused because of the said misplacement. What is submitted by Mr. Sanghi, learned counsel for the petitioner is that some seats have been shown un-recognized in the Gazette and when some other seats have been shown in the same category in the prospectus and thereby an anomaly has crept in. Be that as it may, the same really does not have any impact on the adjudication of the present lis, as the relief prayed for is really not dependent upon the same. Hence, we do not intend to address ourselves to the said issue.

28. Before we part with the case, we may take note of another submission of Mr. Sanghi that it is obligatory and incumbent on the part of the State to enter into correspondence with the Medical Council of India to fill up the seats by providing adequate infrastructure, staff and faculty members. It is the duty of the State to see that the seats do not go waste. It is imperative on the part of the State especially in a State like Madhya Pradesh that more doctors come up and the people avail treatment easily.

29. It needs no special emphasis to state that the State has to rise to the occasion and enter into correspondence with the Medical Council of India much ahead of time so that appropriate steps are taken for getting the seats recognized. Health being the primary concern of the homo-sapiens and an insegregable facet of Article 21 of the Constitution of India, the same cannot be marginalised or kept at bay by the State Government. Waking up at the last moment creates enormous difficulty for all concerned. It is really inscrutable how the State Government could advertise the unrecognized seats. The State would have been well advised to fulfill the requirements as mandated under the 1956 Act and the Regulations framed therein and proceeded thereafter. The State cannot play possum and leave everything to chance. Hide and seek may be an interesting game for children but is a condemnable idea in the field of medical education. We hope and trust that action in quite promptitude shall be taken in future so that seats are recognized and there is no grievance by the students as well as suffering people that they do not have adequate number of doctors and all be done regard being had to principles of transparency. We say so, as a Division Bench in *Arun Singh Yadav Vs. State of M.P. and others*, ILR (2007) 178 has stated thus:

> " We would like to observe that henceforth the authorities, who conduct counselling, should follow a transparent procedure in which candidates seeking admission to MBBS/BDS courses have trust and confidence. The procedure should be such that they should not feel that although better seats were available at the time of their counselling, information with regard to such seats was withheld from them and as a consequence, they were misled to take admission in less attractive seats and the better seats were offered to show favour to candidates of their choice. What exactly should be the transparent and fair procedure to be adopted is

for the counselling authorities to work out. This new transparent and fair procedure should be devised and adopted in the next counselling."

(quoted from placitum).

30. With the aforesaid observations and directions, the writ petitions are disposed of. There shall be no order as to costs.

Petition disposed of.

I.L.R. [2008] M. P., 3103

WRIT PETITION

Before Mr. Justice Abhay M. Naik

10 July, 2008*

NANAKRAM MUKATI ... Petitioner

Vs.

THE BOARD OF SECONDARY EDUCATION M.P. BHOPAL & anr. ... Respondents

Madhyamik Shiksha Manyata Viniyam, 2005, Regulation 5(2) - ***Recognition of School*** *- Petitioner running Higher Secondary School and was granted recognition from time to time - Total area of the school less than 4000 sq.ft. - Recognition for school granted for the academic year 2007-08 with the condition that strength of the qualified staff would be fulfilled and the endowment of the fund would be made sufficient as per the requisite criteria - Abruptly recognition cancelled for the reason that area of the school less than 4000 sq.ft. - Order challenged - Held - Recognition, having been granted on the basis of the information provided by the petitioner could not have been withdrawn during the continuance of the said academic year without issuing a show cause notice to the petitioner, moreso, because students were already admitted for the academic session and they could not have been forced to withdraw from the school and seek admission in other institutions - Action of the Board in cancelling the recognition during mid of the academic session 2007-08 is, thus, violative of principles of natural justice and is not sustainable in law - Order cancelling recognition quashed - Respondent Board is directed to declare the result of students who were allowed to appear through the petitioner's school in the examination of the academic session 2007-08.* (Paras 8 & 9)

माध्यमिक शिक्षा मान्यता विनियम, 2005, विनियम 5(2) – स्कूल की मान्यता – याची उच्चतर माध्यमिक विद्यालय चला रहा और समय–समय पर मान्यता दी गई – विद्यालय का कुल क्षेत्रफल 4000 वर्गफीट से कम – स्कूल के लिए मान्यता शैक्षणिक वर्ष 2007–08 के लिए इस शर्त के साथ प्रदान की गई कि अपेक्षित मानदण्डों के अनुसार योग्य स्टाफ की पूर्ति की जायेगी और निधि का विन्यास पर्याप्त किया जायेगा – आकस्मिक रूप से मान्यता इस कारण रद्द की गई कि विद्यालय का क्षेत्रफल 4000 वर्गफीट से कम है – आदेश को चुनौती दी गई – अभिनिर्धारित –

*W.P. No.12956/2007 (Jabalpur)

मान्यता, याची द्वारा प्रदत्त जानकारी के आधार पर प्रदान की जाने से याची को कारण बताओ सूचनापत्र जारी किये बिना उक्त शैक्षणिक वर्ष के जारी रहने के दौरान वापस नही ली जा सकती थी, इसके अतिरिक्त क्योंकि छात्रों को शैक्षणिक सत्र के लिए प्रवेश दिया जा चुका था और उन्हें स्कूल से अलग हो जाने और अन्य संस्थानों में प्रवेश लेने के लिए विवश नही किया जा सकता था – इस प्रकार शैक्षणिक सत्र 2007–08 के मध्य में मान्यता रद्द करने में मण्डल का कृत्य नैसर्गिक न्याय के सिद्धांतों का उल्लंघन है और विधि में स्थिर रखे जाने योग्य नही है – मान्यता रद्द करने का आदेश अभिखण्डित – प्रत्यर्थी मण्डल को उन छात्रों का परिणाम घोषित करने के लिए निदेश दिया गया जिन्हें शैक्षणिक सत्र 2007–08 की परीक्षा में याची के विद्यालय के माध्यम से बैठने की इजाजत दी गई थी।

K.S. Rajpoot, for the petitioner.
Naman Nagrath, for the respondents.

ORDER

ABHAY M. NAIK, J. :–This order disposes of Writ Petition No.12956/07 (Nanakram Mukati Vs. The Board of Secondary Education & another) and Writ Petition No.6866/08 (Rahul Pal Vs. The Board of Secondary Education & another). Reference to annexures is being taken from Writ Petition No.12956/07.

2. Nanakram Mukati, President of Model Education Society submitted Writ Petition No.12956/07 with averments that the said Society is running Higher School and Higher Secondary School since last 15 years in the name of B.G. Memorial Higher Secondary School at Nehru Nagar, Bhopal in a tenanted premises having obtained on rent vide registered lease dated 17.7.1989. Recognition used to be granted to it. Lastly, it was granted for the academic session 2007-08 which is revealed in Annx.P/4 dated 30.5.2007. On the basis of such recognition, 250 students were admitted in Class-X and XII for the academic session 2007-08. Information about the admitted students was duly furnished to the District Education Officer, Bhopal.

3. Suddenly, during academic session 2007-08, the Board of Secondary Education (hereinafter referred to as " the Board" for brevity) withdrew the recognition granted earlier for the said academic session and cancelled it vide letter No.596/Recognition/2007 dated 3.8.2007 contained in Annx.P/8 on the ground that the area of the constructed building of the petitioner's school was less than the area prescribed under Regulations 2005 of the Madhya Pradesh Board of Secondary Education. This order was challenged in Civil Suit No.693-A/07 before the Court of Third Civil Judge Class-II, Bhopal, which was withdrawn. Later on, the present writ petition has been preferred challenging Annx.P/8.

4. The Board submitted its reply stating therein that the M.P. Madhyamik Shiksha Manyata Viniyam, 2005 were approved vide Notification dated 6th January 2006 and were published in the Gazette dated 7th January 2006. According to Regulation 5(2), a school with Primary to Higher Secondary Classes shall have a constructed building with minimum 4000 sq.ft area and the petitioner is, thus, found rightly to be not entitled to the recognition. The recognition has been accordingly rightly cancelled and the writ petition is liable to be dismissed.

5. Amongst all the students who have been admitted during academic session 2007-08 in the petitioner's school, one student, namely, Rahul Pal has submitted Writ Petition No.6866/08 against the respondents with a contention that he was admitted in the academic session 2007-08 when the recognition granted to the petitioner was in force. His contention is that the recognition once granted, cannot be withdrawn or cancelled in the impugned manner to the detriment of students. He has appeared in the examination of Higher Secondary School Certificate Examination as per Annx.P/1. He appeared in the Examination on the strength of the interim order passed by this Court on 3.10.2007. However, his contention is that once having permitted to admit on the basis of recognition for a particular year, the Board has no power to withdraw the recognition in mid session and the students cannot be forced to change the school during mid academic session.

6. Learned counsel for parties made their respective submissions.

7. Shri Naman Nagrath, learned counsel appearing for the Board made available the original file dealing with the recognition of petitioner's school and its further cancellation. Original record of the Board reveals that the recognition to the petitioner's school was granted for the academic session 2007-08 in the month of June 2007 and the certificate of recognition was granted vide No.540/Recognition/07 dated 30.6.2007 on the condition that strength of qualified staff would be fulfilled and the endowment fund would be made sufficient as per requisite criteria. It is further revealed from the record that on 2.8.2007, that the matter for recognition was reconsidered suo motu on the ground that the area of the constructed building was merely 1500 sq.feet which was less than the area prescribed in the Regulations. Matter was placed for cancellation of the recognition and, ultimately, it was cancelled as was informed by the Board vide letter No.596 dated 3.8.2007; copy whereof is on record as Annx.P/8 which has been challenged herein.

8. It is true that the petitioner has been unable to establish that it has got requisite area of constructed building i.e. 4000 sq.feet. Petitioner is admittedly running its school from Primary Class to Higher Secondary Classes. Hence, by virtue of Regulation 5(2)(i) of the Regulation of 2005, it shall have constructed building with an area of minimum 4000 sq.feet. However, it is not a case wherein the petitioner made some misrepresentation or provided some incorrect information regarding the area of constructed building. Recognition was granted to the petitioner's school in the month of June 2008 for the academic session 2007-08 with a direction to fulfill the conditions regarding qualified staff and endowment fund. It is not the case of the Board that the recognition has been withdrawn or cancelled for non-fulfillment of any of the conditions mentioned in the certificate of recognition. On the contrary, it has been cancelled for non-fulfillment of the conditions pertaining to the area of the constructed building. Petitioner was granted recognition for the academic session 2007-08 on the strength of area of constructed building which was disclosed by it while seeking renewal of recognition for the

said academic year. The recognition, thus, having been granted on the basis of the information provided by the petitioner could not have been withdrawn during the continuance of the said academic year without issuing a show cause notice to the petitioner, moreso, because students were already admitted for the academic session and they could not have been forced to withdraw from the school and seek admission in other institutions. Action of the Board in cancelling the recognition during mid of the academic session 2007-08 is, thus, violative of principles of natural justice and is not sustainable in law.

9. In the result, both the writ petitions are, hereby, allowed. Impugned order Annx.P/8 is, hereby, quashed. Respondent Board is, hereby, directed to declare the result of students who were allowed to appear through the petitioner's school in the examination of the academic session 2007-08.

10. With the aforesaid direction, both the petitions, stand allowed.

No order as to costs.

Petition allowed.

I.L.R. [2008] M. P., 3106

WRIT PETITION

Before Mr. Justice S.C. Sharma

25 July, 2008*

PRITAM SINGH ... Petitioner

Vs.

CANCER HOSPITAL AND RESEARCH INSTITUTE & anr. ... Respondents

Industrial Disputes Act (14 of 1947), Sections 2-A, 25-F - ***Retrenchment*** - *Petitioner working continuously for period of 18 years with notional breaks - The appointment not extended - Labour Court rejecting the claim that as the contract has not been extended, the provision of Section 25-F of Act shall not apply - Held - Workman was not appointed for a fixed term and the project is not over - The services would not be brought to an end without following the due process of law particularly when the appointment was not a contract or a fixed term appointment.* (Para 7)

औद्योगिक विवाद अधिनियम (1947 का 14), धाराएँ 2–ए, 25–एफ – **छंटनी** – याची कल्पित अंतरालों के साथ लगातार 18 वर्ष से कार्यरत – नियुक्ति नही बढ़ायी गई – श्रम न्यायालय ने दावा खारिज किया कि संविदा नही बढ़ाया गया था इसलिए अधिनियम की धारा 25–एफ के उपबंध लागू नही होंगे – अभिनिर्धारित – कर्मकार निश्चित अवधि के लिए नियुक्त नही किया गया और परियोजना पूर्ण नही हुई – विधि की सम्यक् प्रक्रिया का पालन किये बिना सेवाऐं समाप्त नही की जायेंगी विशिष्टतः जब नियुक्ति संविदा या निश्चित अवधि की नियुक्ति नही थी।

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*W.P. No.2197/2004(S) (Gwalior)

Cases referred :

(2006) 9 SCC 434, AIR 2003 SC 3553, 2003 MPLSR Vol.15 150, 1998 MPLSR 369, (2006) 3 SCC 81, (2006) 2 SCC 794.

B.P. Singh, for the petitioner.

Raghavendra Dixit, for the respondent No.1.

ORDER

S.C. SHARMA, J. :–The petitioner before this Court is aggrieved by an award passed by the Labour Court dated 16.1.2004 by which his termination has not been interfered with. In the present case, the petitioner was appointed as Ward Boy with effect from 4.10.1979 at Cancer Hospital and Research Institute, Gwalior, which is a trust registered under the Provisions of the Madhya Pradesh Cooperative Trust Act. The petitioner was appointed on the post of Ward Boy with effect from 4.10.1979 and served the respondent no.1 Institute upto 31.8.1997 i.e. almost for a period of 18 years. As per the averments made in the writ petition which are also not denied by the respondents, the appointment order was for a fixed period and after completion of one year's service fresh appointment was issued from time to time. Annexure P/12 is one such agreement executed between the petitioner and respondent no.1 appointing him on a fixed salary for a period of one year. As the petitioner was discontinued by the respondent no.1 and provisions of Madhya Pradesh Industrial Disputes Act (Standing Orders) Act, 1961, (hereinafter referred to as the 'I.D. Act') as well as the provisions of the Industrial Disputes Act, 1947 were not complied with, the petitioner submitted an application under Section 2-A of the I.D. Act before Conciliation Officer, Gwalior, raising an industrial dispute for conciliation. As the conciliation resulted in failure, a reference was raised before the Labour Court on 3.4.1999 and the workman submitted the statement of claim before the Labour Court and a reply was also filed on behalf of the management. The respondent no.1 did not examine any witness. However, submitted the contract agreement in evidence. The Labour Court after examining the matter came to the conclusion that the appointment was issued with effect from 1.4.1977 as the period has come to an end, it is not a case of illegal retrenchment and therefore, the question of compliance of Section 25-F of the I.D.Act does not arise.

2. The contention of the learned counsel for the petitioner that the documents which are produced before the Labour Court was having certain interpolation as the date i.e.1.3.1997 and the period of six months was inserted later on. In fact, when the contract was signed, there was no such condition that he is being continued for a period of six months.

3. On the other hand, the learned counsel for the respondents have vehemently argued that the matter does not fall within the meaning of illegal retrenchment, as the petitioner was appointed on a fixed tenure basis and from time to time his appointment was renewed on fixed term basis and his services have not been

continued after expiry of the period as per the agreement. The counsel for the respondents has further stated that the award delivered by the Labour Court does not warrant any interference in the facts and circumstances of the case.

4. Having heard the learned counsel for the parties, it is evident that the petitioner was appointed with effect from 4.10.1979 and has continuously served respondent no.2 institution up-to 31.8.1997. It is true that the respondents have issued fresh appointment orders every year and some of the appointment orders were issued after an expiry of six months' period but the fact remains that the petitioner has continued in service from the year 1979 to 1997. The documents on record revealed that the petitioner workman was repeatedly engaged by the respondents for a fixed period without any break and has worked for almost 18 years and therefore, it can be safely gathered that the intention of the management was not to engage the workman for a specified period as alleged but was to defeat the rights available to him under Section 25-F of the Act. The aforesaid contracts at the hands of the management respondent no.1 to employ the petitioner repeatedly after a notional break clearly falls within the ambit and scope of unfair labour breaks. It is not the case of the respondent no.1 that the petitioner was involved in some misconduct nor it has has been stated that the petitioner was not holding the qualification of the post. He was appointed as Ward Boy and while passing an award, the Labour Court has not at all considered this vital aspect of the case, the Labour Court merely because the last agreement provided for continuance in service only for a limited period of six months, has held that the petitioner's discontinuance cannot be termed as illegal retrenchment. The analogy arrived at by the Labour Court is contrary to the judgment delivered by the Apex Court in the case of *Haryana State Electronics Development Corporation Ltd. Vs. Mamni,* 2006 Vol.9 SCC 434.

5. The Apex Court in *Haryana State Electronics Development Corporation Ltd* (supra) held that in such cases where the workman was employed repeatedly after a notional break, the intention of the employer was to defeat the rights available to him under Section 25-F of the I.D. Act. The Apex Court in the case of *S.M.Nilajkar and Ors Vs. Telecom, District Manager, Karnataka,* reported in AIR 2003 SC 3553 has held that the discharge of surplus labour or staff by an employer for any reason otherwise than way of punishment would amount to retrenchment and the Apex Court has directed therein to accommodate workers in some other project of Govt. of India. Similarly, in the case of *Municipal Council, Shahpura, Mandla Vs. State Labour Court, Jabalpur and others,* 2003 M.P.L.S.R. Vol.15 page 150, it has been held that as per the provisions of Section 2 (00)(bb)- if a workman has completed 240 days in one calendar year, even when he was employed on daily wages, he is entitled for protection as per the statutory provision under I.D. Act and his services cannot be dispensed with without compliance of Section 25-F of the Act. This Court has again in the case of *M.P.*

Text Book Corporation Vs. Krishna Kant Pancholi & Another, 1998 M.P.L.S.R. 369, has taken a similar view in the matter.

6. The learned counsel for the respondents has relied upon an order in the case of *Municipal Council, Samrala Vs. Raj Kumar,* 2006 Vol.3 S.C.C. 81, in which the Apex Court has held that as appointment was for a fixed period, the provisions of Section 25 of the I.D. Act are not applicable.

7. The facts of the case cited by the learned counsel for the respondents are distinguishable to the extent that the petitioner therein was appointed on 12.7.1994 on a contract basis and his services were put to an end on 22.5.1997 after the contract was over whereas in the present case the employees has put in about 18 years of service. The petitioner was not employed in the project of harvest scheme for temporary duration and his employment has not come to an end with the termination of scheme or project and therefore, the judgment referred by the learned counsel is distinguishable. Similarly, the learned counsel for the respondent has also relied upon a judgment delivered in the case of *Haryana State Agricultural Marketing Board Vs. Subhash Chand and another* reported in 2006 Vol.2 SCC 794. In the aforesaid case decided by the Hon.ble Supreme Court, the workman therein was appointed on contractual basis as an Arrival Record Clerk. Such appointments were made during paddy seasons. The case of the petitioner can not be compared with the case of a Arrival Record Clerk who was appointed during paddy seasons. In the present case, the petitioner has served the respondent no.1 for a period of 18 years and, therefore, the judgment is again distinguishable on facts. This is not a case where the workman was appointed for a fixed term and after the project is over or the job is over, his services have been put to an end and the respondent no.1 is still running a Research Institute and the same has not been closed down. It is nobody's case that on account of closure of the institute or on account of some project being over, the workman who was appointed on contract basis is not being continued in service. In this case, the workman was appointed for a fixed tenure after the notional break only with a view to defeat the rights available to the petitioner under Section 25-F of the I.D. Act. However, keeping in view the fact that the petitioner has continued from 4.10.1979 to 31.8.1997 with notional break, his service could not have been dispensed with without following the procedure prescribed under the provisions of I.D. Act. This Court of the considered opinion that in the facts and circumstances of the case, respondents were duty bound to follow the provisions of the I.D. Act, while putting an end to the petitioner's services, as the same has not been done, the discontinuance of the petitioner certainly falls within the meaning of illegal retrenchment.

8. Resultantly, as the respondents have not complied with the provisions of Section 25-F of the I.D. Act and as it has been held by this Court that it is a case of illegal retrenchment, the respondents are directed to reinstate the workman

forthwith. This Court is, therefore, of the view that in the peculiar facts and circumstances of this case, interest of justice would be sub-served if the workman is reinstated with 25 % back wages.

9. Accordingly, the writ petition is partly allowed. No order as to costs.

Petition partly allowed.

I.L.R. [2008] M. P., 3110
WRIT PETITION
Before Mr. Justice Shantanu Kemkar
29 July, 2008*

ARTI CHOUDHARI (DR.) ... Petitioner
Vs.
STATE OF M.P. & ors. ... Respondents

Constitution, Article 311(1), Lok Swasthya Evam Parivar Kalyan Chikitsa Samvida Sewa (Niyukti Tatha Sewa Ki Sharten) Niyam, 2002 - ***Service Law - Petitioner appointed on the post of Medical Officer on contract basis - Termination without notice or enquiry by Chief Medical & Health Officer - Held - Under provisions of Niyam, appointing authority for Medical Officer is Commissioner, Health Services - Termination by CMO, an officer much below the rank of appointing authority, violative of Article 311(1) - Order of termination quashed and petitioner directed to be reinstated with consequential benefits - Petition allowed.*** (Paras 5 to 8)

संविधान, अनुच्छेद 311(1), लोक स्वास्थ्य एवं परिवार कल्याण चिकित्सा संविदा सेवा (नियुक्ति तथा सेवा की शर्तें) नियम, 2002 – सेवा विधि – याची को संविदा के आधार पर चिकित्सा अधिकारी के पद पर नियुक्त किया गया – मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी द्वारा सूचनापत्र या जाँच के बिना सेवा समाप्ति – अभिनिर्धारित – नियम के उपबंधों के अन्तर्गत चिकित्सा अधिकारी का नियुक्ति प्राधिकारी कमिश्नर, स्वास्थ्य सेवाएँ है – नियुक्ति प्राधिकारी की पंक्ति से बहुत नीचे के अधिकारी (सीएमओ) द्वारा सेवा समाप्ति अनुच्छेद 311(1) का उल्लंघन है – सेवा समाप्ति का आदेश अभिखण्डित और याची को पारिणामिक लाभों सहित सेवा में पुनर्नियुक्त करने के निदेश दिये गये – याचिका मंजूर।

V.K. Jain, for the petitioner.
Sanjay Joshi, Deputy G.A., for the respondents.

ORDER

SHANTANU KEMKAR, J. :–Petitioner was appointed on the post of Medical Officer on contract basis in the Public Health & Family Welfare Department of the State Government. Pursuant to her appointment she joined the service w.e.f. 5.12.2005 vide Annexure P/2 at Primary Health Centre, Bhorasa, Block Sonkutch, District Dewas. As the petitioner was not keeping good health, she submitted an

*W.P. No.1043/2008(S) (Indore)

application on 27.11.2007 (Annexure P/3) seeking leave on medical ground. Another application for extension of leave was submitted by her on 08.12.2007 (Annexure P/4). However, the Chief Medical & Health Officer, Dewas vide impugned order dated 07.01.2008 (Annexure P/l) terminated the petitioner's service on the ground that she remained unauthorizedly absent since 28.11.2007 and did not comply with the conditions of her contract appointment.

2. Feeling aggrieved by the aforesaid termination order dated 07.01.2008 (Annexure P/l) the petitioner has filed this petition under Articles 226 and 227 of the Constitution of India.

3. The case of the petitioner is that she was appointed under M.P.Lok Swasthya Evam Parivar Kalyan Chikitsa Samvida Sewa (Niyukti Tatha Sewa Ki Sharten) Niyam, 2002 (in short, 'the Rules'). As per the schedule attached to the Rules, the appointing Authority for the post of Medical Officer on contract basis, is the Commissioner, Health Services, M.P. Bhopal. She stated that her services could not have been terminated by the fourth respondent, Chief Medical Health Officer, Dewas, being an officer much below in the rank of her appointing authority, Commissioner, Health Services M.P. Bhopal. Thus, according to her the order of termination of her service is violative of Article 311 of the Constitution of India and as such is liable to be quashed. She also alleged that the impugned termination order was issued on the ground that she was absent from duty unauthorizedly. This allegation according to her is factually incorrect and the fourth respondent without issuing any show cause notice and holding any Departmental Enquiry could not have issued such an order terminating her services.

4. The respondents filed return and have stated.that the petitioner proceeded on leave without getting the leave sanctioned and as such her services have rightly been terminated by the fourth respondent.

5. On going through the Rules the Schedule attached to the Rules and the uncontroverted averments made in the petition that the petitioner was holding the post of Medical Officer and her appointing authority is Commissioner, Health Services M.P. Bhopal, in my considered view her services could not have been terminated by the fourth respondent Chief Medical and Health Officer, Dewas an officer much below in the rank of the Commissioner, Health Services in view of Article 311 (1) of the Constitution of India.

6. It is also revealed from the impugned termination order dated 7.1.2008 that the petitioner's services have been terminated by the fourth respondent alleging therein that she had remained unauthorizedly absent. However, before terminating her services on this ground neither any show cause notice was issued to her nor any enquiry was conducted. Thus on this ground also the impugned order is unsustainable.

7. Having regard to the aforesaid facts and circumstances of the case, I have no hesitation to hold that the impugned termination order dated 07.01.2008

(Annexure P/1) passed by fourth respondent Chief Medical and Health Officer, Dewas is arbitrary and being violative of Art. 311(1) of the Constitution of India is without jurisdiction.

8. Accordingly, the impugned order dated 07.01.2008 (Annexure P/1) is quashed. As a result, the petitioner is directed to be reinstated with consequential benefits. However, in case the respondents feel, it will be open for them to proceed against the petitioner by taking action against her for her alleged authorized absence, in accordance with law.

9. The petition succeeds. However, no orders as to costs.

Petition succeeds.

I.L.R. [2008] M. P., 3112
WRIT PETITION
Before Mr. Justice Prakash Shrivastava
7 August, 2008*

RAKHIYA BAI ... Petitioner
Vs.
CONSERVATOR OF FOREST & ors. ... Respondents

Van Upaj Vyapar (Viniyaman) Adhiniyam, M.P. (9 of 1969), Sections 5(1) & 15 - *Confiscation - Benefit of Section 15(6) - The petitioner's tractor trolley was confiscated for transporting teakwood without permit - The petitioner sought the benefit of Section 15(6) that it was not in her knowledge that teakwood without permit was being transported - Held - To claim the benefit of Section 15(6), the petitioner is not only required to establish that she had no knowledge but she is also required to establish that her servant or agent also did not have any knowledge and they had not connived and she had taken all reasonable and necessary precautions against the use of vehicle against the commission of such offence - Petition dismissed.*

(Para 12)

वन उपज व्यापार (विनियमन) अधिनियम, म.प्र. (1969 का 9), धाराएँ 5(1) व 15 – अधिहरण – **धारा 15(6) का लाभ** – याची के ट्रेक्टर ट्रॉली का अधिहरण बिना अनुज्ञापत्र सागौन की लकड़ी का परिवहन करने के लिए किया गया – याची ने धारा 15(6) का लाभ चाहा कि यह उसकी जानकारी में नही था कि सागौन की लकड़ी का बिना अनुज्ञापत्र परिवहन किया जा रहा था – अभिनिर्धारित – धारा 15(6) के लाभ का दावा करने के लिए याची को न केवल यह स्थापित करना आवश्यक है कि उसे कोई जानकारी नही थी बल्कि उसे यह भी स्थापित करना आवश्यक है कि उसके नौकर या अभिकर्ता को भी कोई जानकारी नही थी और उन्होंने मौनानुमति नही दी थी और उसने ऐसा अपराध किये जाने के लिए वाहन का उपयोग किये जाने के विरुद्ध सभी युक्तियुक्त और आवश्यक पूर्वावधानियाँ बरतीं – याचिका खारिज।

*W.P. No.8022/2007 (Jabalpur)

Cases referred :

(1997) 9 SCC 647, (2006) 2 MPLJ 65, 2007(1) MPLJ 375, AIR SCW 1761.

Subodh Kathar, for the petitioner.

V.P. Nema, G.A., for the respondents.

O R D E R

PRAKASH SHRIVASTAVA, J. :–This writ petition has been filed challenging the order dated 17.3.07 passed by the learned Additional Sessions Judge, Betul, affirming the order of the Authorised Officer and the appellate authority passed under section 15 of the M.P. Van Upaj Vyapar (Viniyaman) Adhiniyam, 1969, in brief 'the 1969 Act'.

2. Brief facts are that petitioner Rakhiyabai is the owner of Tractor Trolley no.MP 48 M 1565 which is stated to be purchased after obtaining finance from the Bank. The Tractor Trolley was stopped by the forest officers on 16.12.2003 at 11 PM and on inspection it was found to be carrying 40 pieces of teakwood without any transit permit and documents. Indal was driving the tractor.

3. The Authorised Officer initiated proceedings for confiscation of the Tractor on the ground of violation of section 5(1) of 1969 Act. The statements of the prosecution as well as the defence witnesses were recorded and thereafter the Authorised Officer passed the order dated 26.12.2005 directing confiscation of the tractor trolley in question and also the teakwood, which was seized, from the tractor trolley. The order of the authorized Officer was affirmed by the appellate authority by order dated 11.3.2006 against which the petitioner preferred revision before the Additional Sessions Judge, Betul, which was dismissed by order dated 17.3.2007. Aggrieved with this order the petitioner has filed the present writ petition.

4. Learned counsel appearing for the petitioner submitted that the petitioner is an illiterate woman. She has purchased the tractor trolley taking loan and illegal transportation of the teakwood was done without her knowledge, therefore, she should be given the benefit of section 15(6) of the 1969 Act. He further submitted that there is variation in the initial statement of the driver given to the forest authorities and his statement recorded before the Authorised Officer in the confiscation proceedings .

5. Learned counsel appearing for the respondents submitted that all the three authorities / court have concurrently found that petitioner's tractor was involved in the illegal transportation of teakwood and that the petitioner had knowledge of such illegal transportation. He submitted that the findings recorded by the authorities / court below are not perverse findings, therefore, no interference is required.

6. I have heard learned counsel for the parties and perused the record.

7. The findings that the tractor of the petitioner was transporting teakwood has not been seriously challenged. The teak has been declared as specified forest produce by the notification of the State of M.P. dated 10.8.1970. Section 5(1) of

the 1969 Act prohibits purchase or transportation of specified forest produce by any person without the permission of the Govt. In the present matter no permission of the Govt. in the form of transit pass or any other document has been produced, therefore, the violation of section 5(1) of the 1969 Act has rightly been found by the authorities / court below.

8. The petitioner has also advanced arguments claiming the benefit of section 15(6) of the 1969 Act on the ground that the petitioner who is the owner of the tractor / trolley had no knowledge that the illegal transportation of teakwood was being done in the tractor trolley. Section 15(6) provides as under :

> 15(6) No order of confiscation under sub-section (4) of any tools, vehicles, boats, ropes, chains or any other articles (other than specified forest produce seized) shall be made if any person referred to in clause (b) of sub-section (5) proves to the satisfaction of authorized officer that any such tools, vehicles, boats, ropes, chains or other articles were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of objects aforesaid for commission of an offence under this Act.

9. For claiming the benefit of section 15(6) the owner of the vehicle is required to prove to the satisfaction of the Authorised Officer that the vehicle was used without his knowledge or connivance and without knowledge or connivance of his servant or agent and that of reasonable and necessary precautions were taken against the use of the vehicle for commission of offences under the Act. The owner of the vehicle has to establish all these factors. Supreme Court in *State of M.P. V. Suresh Kumar,* 1997(9) SCC 647, has held as under :

> 9. A bare reading of sub-section (6) of Section 15 of the Adhiniyam quoted herein above shows that the burden is on the owner to prove to the satisfaction of the authorized officer that this vehicle was used without his knowledge or connivance and that all reasonable and necessary precautions were taken by him against use of his truck for the commission of an offence under this Adhiniyam. .....
> The respondent owner did not produce any other material on record to discharge the burden under sub-section (6). If this be so, it cannot be said that the competent authority and the appellate authority committed any error in coming to the conclusion that the respondent owner has failed to satisfy the authorized officer that the illegal activity committed by the driver of the truck was without his knowledge or connivance. Mere ipse dixit of the respondent owner cannot be said to be sufficient evidence to discharge burden under Section 15(6) of the Adhiniyam. In our opinion, the High Court has totally misread and misinterpreted provisions of section 15(6). We, therefore, cannot sustain the reasoning

of the High Court and the Sessions Court as regards interpretation of Section 15(6).

10. This court in *Sarjoo Prasad, s/o Mullu Choudhary V. State of M.P. and others,* 2006(2) MPLJ 65, had given the benefit of section 15(6) on establishing the fact that the owner had no knowledge but subsequently after considering this judgment this court in *Dhanaram Golhani V. State of M.P. and others,* 2007(1) MPLJ 375, held as under :

> 8. ..... The petitioner and / or his driver have failed to ensure that the transit pass was issued for the transportation of the disputed wood and have thus, failed to take all sorts of reasonable and necessary precautions while transporting the goods. In the case of *State of M.P. V. Ram Gopal Sharma* (supra), it was found that the owner of the vehicle was unaware of the commission of the offence. In the case in hands, the petitioner and driver are found to have not taken all reasonable and necessary precautions. If the transportation was made without reasonable and necessary precautions, it cannot be said that the order of confiscation is in contravention of section 15 of the said Act.

11. Supreme Court while considering the similar provisions contained in section 59(B) inserted in the Indian Forest Act by West Bengal Amendment Act in the case of *State of West Bengal & Anr. V. Mahua Sarkar,* AIR 2008 SCW 1761, has held as under :

> 9. The requirement is mandatory that the owner has to prove that he had no knowledge or had not connived. It is a matter, which is within his knowledge. Mere assertion without anything else will not suffice. There is another requirement that either he or his agent, if any, or the person in-charge thereof had taken all reasonable and necessary precaution against such use. This aspect has to be established by the concerned person by sufficient material. As noted above, mere assertion in that regard could not be sufficient.

12. Thus, to claim the benefit of section 15(6) the petitioner is not only required to establish that she had no knowledge but she is also required to establish that her servant or agent also did not have any knowledge and they had not connived and she had taken all reasonable and necessary precautions against the use of vehicle against the commission of such offence.

13. It is not in dispute that Indal was driving the tractor trolley during the relevant time. In his statement before the Authorised Officer he admitted that he himself had got loaded the wet teakwood in the tractor without any threat or coercion. He had knowledge of transportation of teakwood in the tractor. The statement of petitioner Rakhiyabai is on record where she admitted that Indal was the driver of her tractor. In her statement before the Authorised Officer she has also not

disclosed anything about the reasonable and necessary precautions, which she had taken against the use of the tractor trolley in the commission of the forest offence. Therefore, onus, which was placed upon the petitioner under section 15(6) of the Act, has not been discharged by her.

14. The Authorised Officer also on the appreciation of the evidence found that the petitioner had come to know about the seizure of tractor trolley by the forest department within two days of the seizure but for 3-4 months she did not take any steps to claim possession of the tractor trolley before the competent officer. The Authorised Officer has found the silent consent of the petitioner and indirect involvement of the petitioner in the commission of forest offence. He also found that the driver was voluntarily transporting the teakwood in the tractor and was involved in the commission of the forest offence. Findings of the authorized Officer have been affirmed by the appellate authority and also by the revisional court. Therefore, in view of these findings also the petitioner is not entitled to the benefit of section 15(6) of the Act.

15. Accordingly, I do not find any merit in the writ petition and the same is hereby dismissed without any orders as to costs.

Petition dismissed.

I.L.R. [2008] M. P., 3116
WRIT PETITION
Before Mr. Justice S.C. Sharma
21 August, 2008*

LALAN THAKUR ... Petitioner
Vs.
STATE OF M.P. & ors. ... Respondents

A. Constitution, Article 226 - *Locus standi* - *Service Law* - *Maintainability of writ petition filed by a person not aggrieved* - *Re-appointment* - *Quo Warranto* - *Held* - *Writ petition for issuance of writ of Quo Warranto is maintainable even not filed by person aggrieved.*

(Para 17)

क. संविधान, अनुच्छेद 226 – सुने जाने का अधिकार – सेवा विधि – जो व्यथित न हो उस व्यक्ति द्वारा पेश रिट याचिका की पोषणीयता – पुनर्नियुक्ति – अधिकार पृच्छा – अभिनिर्धारित – अधिकार पृच्छा की रिट जारी करने के लिए रिट याचिका व्यथित व्यक्ति द्वारा पेश न किये जाने पर भी पोषणीय है।

B. Public Works Department Engineer-in-Chief and Chief Engineer Recruitment Rules, M.P. 1983, Shaskiya Sewak Adhiwarshiki Ayu Adhiniyam, M.P. 1967, Shaskiya Sewak Adhiwarshiki Ayu Sansodhan Adhiniyam, M.P. 1998 - *Re-appointment after retirement* - *The State*

*W.P. No.284/2008(S) (Gwalior)

Government has granted re-appointment to a competent and experienced officer in the larger public interest and the same does not suffer from legal malice at all - It is not a case where a Government servant is being continued in service by virtue of his initial appointment beyond 60 years of age.

(Para 18)

ख. **लोक निर्माण विभाग प्रमुख अभियंता और मुख्य अभियंता भर्ती नियम, म.प्र. 1983, शासकीय सेवक अधिवार्षिकी आयु अधिनियम, म.प्र., 1967, शासकीय सेवक अधिवार्षिकी आयु संशोधन अधिनियम, म.प्र. 1998 – सेवानिवृत्ति के बाद पुनर्नियुक्ति** – राज्य सरकार ने व्यापक लोक हित में एक सक्षम और अनुभवी अधिकारी को पुनर्नियुक्ति दी है और यह विधिक दुर्भाव से ग्रस्त नही है – ऐसा मामला नही है कि जहाँ एक शासकीय सेवक को प्रारम्भिक नियुक्ति के आधार पर 60 वर्ष की आयु के बाद सेवा में बनाये रखा हो।

Cases referred :

AIR 1962 SC 1044, AIR 1965 SC 491, (2001) 4 SCC 734, AIR 2006 SC 3106, R.R. Tripathi & anr. Vs. U.O.I. (PIL) decided by Bombay High Court on 14th & 15th February, 2008, Civil Appeal No.1732/2008.

Vivek Jain, for the petitioner.

Ami Prabal, Dy.A.G., for the respondent No.1.

D.K. Katare with *M.P.S. Raghuvanshi,* for the respondent No.3.

ORDER

S.C. SHARMA. J. :– The petitioner before this Court, a social worker and Chairman of Non-Government Organisation (Loktantrik Bhrishtachar Mukti Morcha), Gwalior has filed this present petition challenging the validity of an order dated 27th December, 2007 (Annexure P/1) passed by the State Government by which the respondent No.3 has been re-appointed on the post of Chief Engineer for a period of one year. The contention of the petitioner is that in the Public Works department State of Madhya Pradesh, there are 11 sanctioned posts of Chief Engineers, out of which 08 posts are for general category, 02 are reserved for the Scheduled Caste category and 01 post is reserved for the Scheduled Tribe category. The petitioner has further stated that the State of Madhya Pradesh has enacted the rules under Article 309 of the Constitution, for appointment of the Chief Engineers and the Engineer-in-Chief known as the Madhya Pradesh Public Works Department Engineer-in-Chief and Chief Engineers Recruitment Rules. 1983 (hereinafter referred to as the Rules of 1983) and the Rules of 1983 does not provide for re-appointment. It has also been stated by the petitioner that age of retirement of these officers is governed under the provisions of the Madhya Pradesh Shaskiya Sewak Adhiwarshiki Ayu Adhiniyam, 1967 and as per the amended in the aforesaid Act. i.e.. Madhya Pradesh Shaskiya Sevak Adhivarshiki Ayu Sanshodhan Adhiniyam, 1998, the age of retirement has been increased to 60 years. and therefore, once there is a statutory provision which provides for retirement from Government service at the age of 60 years, the respondent No.3

could not have been granted the re-appointment on the post of Chief Engineer by the respondents No. 1 and 2. The petitioner has also enclosed a circular issued by the State Government dated 23rd January, 1999 by which the State Government has placed a total ban on extension/re-appointment and has also enclosed a circular dated 22nd February, 2005 by which it has been reiterated that no extension / re-appointment is permitted in the State of Madhya Pradesh. The petitioner has further stated that the post which was likely to fall vacant was to be filled by a reserved category candidate, and therefore, by granting re-appointment to the respondent No.3, the rights of a reserved category candidate have been infringed. It has also been averred by the petitioner that re-appointment to the respondent No.3 has been granted contrary to the public interest and respondent No.3 is not having any special technical or scientific knowledge nor is doing any work making his service indispensable. The petitioner has also stated before this Court that he does have *locus standi* to file this present petition as he is a social worker and public interest is involved in the matter.

2. The learned counsel for the petitioner has relied upon a judgment delivered by the Apex Court in the case of *Calcutta Gas Company (Proprietary) Ltd.. vs. State of West Bengal and others.* reported in AIR 1962 SC 1044 on the ground of maintainability of a writ petition. He has also relied upon a judgment delivered by the Apex Court in the case of *The University of Mysore vs. C.D.Govinda Rao and another.* AIR 1965 SC 491, again on the ground of maintainability of the writ petition.

3. The learned counsel for the petitioner has also placed reliance on a judgment delivered by the Apex Court in the case of *Vinod Kumar vs. State of U.P., and others,* (2001) 4 SCC 734 wherein it has been held that a third party does have a *locus standi* to file a writ petition in case it is a writ of quo warranto or habeas corpus or Public Interest Litigation.

4. Lastly, the learned counsel for the petitioner has relied upon a judgment delivered by the Apex Court in the case of *B.Srinivas Reddy vs. Karnataka Urban Water Supply & Drainage Board Employees Association and others.* AIR 2006 SC 3106, on the same issue and a similar view has been taken by the Apex Court regarding maintainability of a writ petition for issuance of a writ of Quo Warranto.

5. The petitioner has also argued that the Rules of Business does not empower the State Government to grant extension or re-appointment to a Government servant and the stand of the Slate Government is incorrect. It has been stated that there is no statutory provision empowering the State Government to grant extension / re-appointment to the respondent No.3. It has been brought to the notice of this Court that there are 14 Chief Engineers working in the Public Works department and out of them 10 are posted in the department and 04 are working on deputation and by no stretch of imagination extension / re-appointment could have been granted to the respondent No.3.

6. The petitioner has also relied upon a judgment delivered by the Bombay High Court in the case of *R.R.Tripathi and another vs. The Union of India and others, Public Interest litigation (Lodging)* No.93 of 2007 decided on 14th and 15th February, 2008 wherein the extension in . service was quashed in respect of persons who were granted extension by the State of Maharashtra. The contention of the petitioner is that the judgment delivered by the Bombay High Court squarely covers the controversy involved in the present petition.

7. The petitioner has further relied upon a judgment delivered by the Apex Court in the case of *Pancham Chand others vs. State of Himachal Pradesh and others.* Appeal (Civil) No.1732 of 2008 in which it has been held that the Rules of Business should be strictly followed and the decision taken in the matter by the State Government in the aforesaid case was quashed.

8. The respondents No. 1 & 2 / State has filed a detailed reply in the matter. It has been vehemently argued on behalf of the respondents that the petitioner does not have any *locus standi* to file this present petition as he is not the person aggrieved. The executive instruction dated 01st October. 2004 provides for extension / re-appointment / contractual appointment to the persons beyond 60 years of age. Clause 4 thereof provides that an extension can be granted in the public interest to the employees working in the scientific and technical field beyond 60 years of age. The respondents / State have enclosed a note sheet relating to promotions to the post of Chief Engineers and the Superintendent Engineers along with the return and it has been contended that most of the Chief Engineers were due for retirement in the year 2008. It has been further stated by the respondents that in the feeder cadre, i.e.. the Superintendent Engineers were not available to be promoted as the Chief Engineers, and therefore, as large number of working Chief Engineers were going to retire and as suitable persons were not available for promotion, in the interest of public service and in larger public interest, re-appointment has been granted to the respondent No.3. It has also been argued that the matter relating to the grant of extension / re-appointment of the respondent No.3 has been processed as per the executive instructions and also keeping in view the provisions of the Rules of Business which empowers the State Government to grant extension / re-appointment, the respondent No.3 .was granted the re-appointment for a period of one year with effect from 30th November, 2007 or the date of taking over the charge whichever is earlier.

9. The respondents have further contended that the order has been passed in the public interest and there is no procedural irregularity committed by the respondents / State in passing the impugned order.

10. The respondents / State have stated finally that the order was initially passed in anticipation of the approval of the cabinet and during pendency of the writ petition, the matter was placed before the cabinet and the approval has been granted by the council of Ministers vide order dated 04th August, 2008 filed as

Annexure A to I.A.No. 12468 of 2008 and therefore, the provision relating to re-appointment have not been violated and the order passed by the State Government does not warrant any interference.

11. The respondent No.3 has filed a reply and it has been stated in the reply that the petitioner does not have any *locus standi* to file this present petition as he is not a person aggrieved. It has also been argued that the Government is in need of technical hands, keeping in view the large number of on going projects of national importance, the State Government has exercised its wisdom and has granted the re-appointment to the respondent No.3. The respondent No.3 has prayed for dismissal of the writ petition.

12. Heard learned counsel for the parties at length and perused the record.

13. It is evident from the material available on record that there is no dispute that the respondent No.3 stood retired on attaining the age of superannuation with effect from 30th November, 2007 and the State Government has passed an order for re-appointment for a period of one year on 27th December, 2007 which was approved by the cabinet vide order dated 04th August, 2008.

14. In the present case, the post of Chief Engineer can be filled up under the recruitment rules by way of promotion only and the Superintendent Engineers having experience of five years and also on the post of the Executive Engineer are entitled to be considered for promotion. The respondent / State has stated in the return that only three Superintendent Engineers in the department are having such qualifications and out of them, two are facing departmental enquiry proceedings, and therefore, ineligible for promotion. This aspect of the matter was considered and a proposal was forwarded to the State Government for promoting the Superintendent Engineers by granting relaxation under the experience clause and at the same time another proposal was forwarded for granting extension / re-appointment to the working Chief Engineers and the Engineer-in-Chief for a period of two years. However, keeping in view the scarcity of eligible persons for promotion and the larger public interest, so also, keeping in view the on-going important and prestigious projects in the State of Madhya Pradesh, it was proposed to re-appoint the respondent No.3 and the matter was forwarded to the Chief Minister on 24th December, 2007. As the order of extension / re-appointment was required to be issued with the approval of the cabinet, an order of re-appointment was passed in anticipation of the approval of the cabinet. The order of re-appointment has to be passed with the approval of cabinet as provided under the Rules of Business of the Executive Government of Madhya Pradesh and also as provided under the executive instructions issued by the State Government dated 01st October, 2004, and therefore, an order of re-appointment was issued in favour of the respondent No.3 in anticipation of the approval of the cabinet as provided under the Rules of Business of the Executive Government of Madhya. Pradesh and later on the approval of the cabinet has already been accorded in

the matter. It has also been pointed out by the State Government that there has been no violation of the reservation policy while granting the extension / re-appointment to the respondent No.3 and as it is only in an exceptional case, re-appointment is permissible in the public interest. This Court has carefully gone through the executive instructions dated 01st October, 2000 and also the executive instructions dated 04th August, 1998 issued by the State Government which are enclosed along with the return as Annexure R/1. The State Government has granted the extension / re-appointment to the respondent No.3, keeping in view the executive instructions on the subject, and therefore, this Court does not find any illegality in the matter.

15. The petition was opposed by the respondent / State on the ground of maintainability, however, the Apex Court in the case of *Calcutta Gas Company (Proprietary) Ltd.* (supra) has held that Article 226 of the Constitution confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of the rights conferred by Part-III or for any other purpose It has also been held that in case of some of the writs tike habeas corpus or quo warranto, a person who is not the person aggrieved can also prefer a writ petition in the matter. A similar view was expressed by the Apex Court in the other judgments cited by the learned counsel appearing for the petitioner.

16. The Apex Court in the case of *B.Srinivasa Reddy* (supra) has held in paragraph 81 as under:

> In our opinion, the finding of legal mala fides is unsustainable being based on a misunderstanding of the law and facts. When a competent and experienced officer of an outstanding merit is appointed to a higher post on contract basis after his superannuation from service in larger public interest does not suffer from legal malice at all. The decision of the then Chief Minister, Shri S.M. Krishna, recorded in the file which is also extracted by the High Court at page 69 of S.L.P, Paper Book. Vol.II. In the context of the note put up by the Secretary of the Department, it is again extracted at pages 67 and 68 which clearly bring out the fact that the appointment was made in the interest of the Board and the State at a time when nobody else other than the appellant could have served the interests of the State better. The High Court failed to appreciate the element of urgency involved in making the appointment because of impending negotiations with the World Bank scheduled for 9.2.2004. The writ petition, in our opinion, was motivated as respondent No. 1 had lodged a false complaint to the Lokayukta against the appellant which was found to be baseless by the Lokayukta (Annexure P-9). A petition praying for a Writ of Quo Warranto being in the nature of public interest litigation, it is not maintainable at the

instance of a person who is not unbiased. The second respondent is the President of the first respondent-Union. He has chosen this forum to settle personal scores against his erstwhile superior officer after his retirement. The proceedings, in our view, is not meant to settle personal scores by an employee of the department. The High Court, in our view, ought to have dismissed the writ petition filed by respondent No. 1 at the threshold.

17. This Court after taking into account the pleadings of the parties and nature of relief claimed in the petition is of the considered opinion that the objection raised by the respondents in respect of maintainability of the writ petition is not sustainable and the petition filed by the petitioner under Article 226 of the Constitution for issuance of a writ of Quo warranto is maintainable before this Court. The petitioner has not been able to make out a case for interference on merits and therefore, this Court is of the considered opinion that the order dated 27th December, 2007, passed by the State Government does not warrant any interference.

18. However, this Court is of the firm opinion that the State Government has justified the extension / re-appointment granted to the respondent No.3 on the post of Chief Engineer for a period of one year. It is not a case where a Government servant is being continued in service by virtue of his initial appointment beyond 60 years of age. It is a case of re-appointment after retirement, and therefore, the rules of Adhiniyam of 1967 and as amended Adhiniyam of 1988 which provides for retirement age to be 60 years are certainly not applicable in the matter. The respondent No.3 has retired on attaining the age of superannuation as per the provisions of the Adhinyam of 1967 and as amended in the year 1988 and thereafter the State Government has granted re-appointment for a period of one year for the reasons which are certainly in public interest. The State Government has granted re-appointment to a competent and experienced officer in the larger public interest and the same does not suffer from legal malice at all.

19. Resultantly, petition being devoid of merit and substance is hereby dismissed. No order as to cost.

Petition dismissed.

I.L.R. [2008] M. P., 3123
WRIT PETITION
Before Mr. Justice R.K. Gupta
21 August, 2008*

SHASHI PANDEY (SMT.) ... Petitioner
Vs.
B.K. CHOUBEY ... Respondent

Civil Procedure Code (5 of 1908), Section 10 - *Stay of suit - Maintainability of application* - *Landlord earlier filed a suit for eviction and arrears of rent in the year 2004 - Tenant filed a counterclaim for the interest on security amount - Subsequently, the suit was withdrawn and only counterclaim remained - Second suit filed by the landlord for eviction and arrears of rent in the year 2006 - In second suit an objection has been raised by the tenant that the second suit is liable to be stayed in view of Section 10 CPC - The court below rejected the application - Held - The two suits are on different footings and in the earlier suit the matter in relation to the subsequent suit is not the matter "substantially in issue" - Court below rightly rejected the application - Petition dismissed.* (Para 17)

सिविल प्रक्रिया संहिता (1908 का 5), धारा 10 – वाद का रोक दिया जाना – आवेदन की पोषणीयता – भूस्वामी ने पूर्व में बेदखली और बकाया किराये के लिए वाद वर्ष 2004 में पेश किया – किरायेदार ने प्रतिभूति राशि पर ब्याज के लिए प्रतिदावा पेश किया – पश्चात्वर्ती प्रक्रम में, वाद वापस ले लिया गया और केवल प्रतिदावा चलता रहा – भूस्वामी द्वारा द्वितीय वाद बेदखली और बकाया भाड़े के लिए वर्ष 2006 में पेश किया गया – द्वितीय वाद में किरायेदार द्वारा आपत्ति की गई कि सि.प्र.सं. की धारा 10 के अनुसार द्वितीय वाद की कार्यवाही रोके जाने योग्य है – अधीनस्थ न्यायालय ने आवेदन खारिज किया – अभिनिर्धारित – दो वाद पृथक आधारों पर हैं और पूर्ववर्ती वाद की विषयवस्तु पश्चात्वर्ती वाद में "सारतः विवाद्यक" नही है – अधीनस्थ न्यायालय ने आवेदन उचित रूप से खारिज किया – याचिका खारिज।

Cases referred :

AIR 1982 SC 83, AIR 1987 SC 2302, (2005) 7 SCC 317.

R.K. Sanghi, for the petitioner.
R.P. Khare, for the respondent.

ORDER

R.K. GUPTA, J. :–This is a petition filed by the petitioner invoking the writ jurisdiction of this Court under Article 227 of the Constitution of India by which the petitioner has challenged the order dated 24.10.2007 whereby the court below has rejected the application filed on behalf of the petitioner under Section 10 of the Civil Procedure Code, 1908 (hereinafter referred to in short as "the CPC") for stay of the subsequent suits.

*W.P. No.1413/2008 (Jabalpur)

2. The facts leading to the present petition are that petitioner is a tenant. The respondent earlier filed a suit for eviction and also for arrears of rent. In the said suit the present petitioner was the defendant, who being a tenant also filed a counter-claim. Subsequently, the aforesaid suit was withdrawn and only counter-claim remained.

3. The second suit filed by the landlord was for seeking a decree for eviction and also for the arrears of rent w.e.f. 1.11.2006. In the second suit an objection has been raised on behalf of the petitioner/tenant that this civil suit is liable to be stayed in view of Section 10 of the CPC. The court below has rejected the application filed by the petitioner for stay of the suit.

4. On behalf of the respondents it is stated that counterclaim which was filed on behalf of the petitioner has been returned to the petitioner for filing it in an appropriate court and thereafter the said counterclaim has not been filed in any appropriate court. Under the circumstances, it is prayed for that the present petition is liable to be dismissed. The order passed by the court below for return of the plaint to file it in an appropriate court has been challenged by the present petitioner in Civil Revision No. 341/2007. Therefore, the question whether the court below has rightly passed the order for return of the plaint or not? is not decided in the present case.

5. Learned counsel for the petitioner submitted that earlier in the counterclaim a prayer has been made for the refund of the security amount of Rs.50,000/- which was deposited by the petitioner being the tenant and on this basis it is submitted by him that the aforesaid amount of Rs.50,000/- is either liable to be refunded or is liable to be adjusted towards the total rent due to be paid.

6. In this reference, it is to be seen that the earlier suit was for eviction and also for arrears of rent and in that suit a counterclaim was filed on the ground that under the garb of security amount from the tenant the landlord has taken a sum of Rs.50,000/- fraudulently. It is also stated that the aforesaid amount has been fraudulently taken by the landlord, therefore, under Section 6 of the M.P. Accommodation Control Act the plaintiff is not entitled to receive any amount of security and accordingly deposit of Rs.50,000/- as security amount is illegal and, therefore, interest is to be paid on this amount to the tenant. Accordingly, the present petitioner only claimed interest @ 9% per annum to the tune of Rs. 57,750/-.

7. It is also seen in the present case that if the earlier counterclaim which was filed by the petitioner is treated to be a counterclaim for refund of the aforesaid amount of Rs.50,000/- which was deposited as security amount and interest calculated and according to the petitioner, it comes to Rs.57,750/- and total recoverable amount comes to Rs.1,07,750/- as on the date of counterclaim. Paragraph 3 at page 9 of the counterclaim filed by the present petitioner which is Annexure P-2 to the writ petition, shows that a sum of Rs.6,760/- alone has been paid as court fee as against the interest claimed on the amount of Rs.50,000/-.

Thus, no court fee has been paid by the present petitioner for refund of the amount of Rs.50,000/- and the court fee has been paid on Rs.57,750/- which is interest according to the petitioner from 16.11.1991 till the filing of the counterclaim.

8. In view of the aforesaid facts, for the purposes of applying Section 10 of the Civil Procedure Code what has to be appreciated is whether the matter in both the suits and particularly in a subsequent suit is "substantially in issue" so that the subsequently filed suit has to be stayed.

9. On basis of the facts as stated hereinabove, since the petitioner has only claimed interest of Rs.57,750/- on the amount of Rs.50,000/-, which was deposited by him being a tenant as security then the earlier suit only remains for the interest and not for the adjustment or refund of the amount of Rs.50,000/- of security amount (adjustment towards rent). Since the subsequently filed suit is for the arrears of rent from 1.11.2006 and also for eviction, therefore, it cannot be said that second suit which has been filed is a suit where substantially the matter in issue is the same which is in the earlier suit. In the suit the arrears of rent have been claimed from 1.11.2006 and the earlier suit is only for claiming the interest on the deposit of Rs.50,000/-.

10. In view of the aforesaid, the subject matter of both the suits i.e. in counterclaim filed by the petitioner and also suit for eviction and also for arrears of rent w.e.f. 1.11.2006 is entirely different. In this reference, the issues which have been framed by the court below are filed as Annexure P-7 to the writ petition wherein three issues have been framed. The issues are also entirely different in the subsequently filed suit by the defendant than the earlier suit. The court below has also arrived at a conclusion that subject matter of both the suits is entirely different and on that basis came to the conclusion that Section 10 of the CPC has no application in the present case.

11. In support of his contentions learned counsel for the petitioner relied upon the judgment passed by the Apex Court in P.V. Shetty v. B.S. Giridhar, AIR 1982 SC 83 and referred to paragraph-2 of the same, which is reproduced herein below:

> "The very narration of facts in this case would show what should be the correct approach in this matter. If the stay of further proceedings in the suit, as prayed for by the appellant, is not granted and the suit proceeds and results in eviction, the application for fixation of fair rent becomes infructuous. On the other hand, if the application for fixation of fair rent is allowed holding that the appellant is a tenant as understood under the Rent Act, and the fair rent is Rs. 500/- or less per month he would be entitled to the protection of the Rent Act which determination will have impact on the suit, subject, of course, to other contentions that may be raised in the suit. Now it is an admitted position that the application for fixation of fair rent preceded the filing of this suit. Obviously, therefore, the just and fair approach, balancing the equities

would be to stay further hearing of the suit till the application for fixation of fair rent is decided. But as Mr. Datar, learned counsel for the respondent, voices a serious apprehension that in that event the suit may not be decided for years. That is a recurring phenomenon in our courts and we must guard against it."

12. On careful reading of the judgment relied upon by the learned counsel for the petitioner it is seen that the said judgment has no application in the present case. In the facts of the said case, tenant filed a case under the Rent Control Act, 1961 before the competent authority for fixation of the fair rent. The said authority by an interim order fixed the fair rent @ Rs.500/- per month. During the proceedings of the aforesaid case landlord filed a suit for eviction. The landlord also filed an application for fixation of fair rent and for interim stay. Under these circumstances, the Apex Court held that when application for fixation of fair rent has already been moved by the tenant before the competent authority under the provisions of the Rent Control Act, 1961 and when the landlord has filed a second suit for fixation of the fair rent then the application which has been submitted by the tenant before the competent Court under the Rent Control Act, 1961 shall render infructuous. In the present case, the landlord has not filed the case for arrears of rent for the period prior to 1.11.2006 and present petitioner being a tenant has also not filed counterclaim for adjustment or recovery of the amount of Rs.50,000/- deposited by the tenant as a security amount. Under the circumstances, the aforesaid judgment relied upon by the counsel for the petitioner has no application in the present case.

13. Yet another judgment on which reliance is placed by learned counsel for the petitioner is reported in AIR 1987 SC 2302, *M/s. Sarwan Kumar Onkar Nath v. Shri Subhas Kumar Agarwalla.* A careful reading of the judgment as such shows that this judgment also has no application in the present case. The reason being that it was a case where a tenant paid the rent in advance and the landlord was seeking the decree for eviction on the ground of arrears of rent of two months. It was an understanding between the parties that advance rent could be adjusted against the rent whenever necessary or required and under the circumstances the Apex Court held that tenant was not a defaulter and no decree of eviction on the ground of arrears of rent could have been passed. The facts of the present case are different. In the present case, the amount of Rs.50,000/- in the counterclaim has not been prayed for its adjustment and no court fee for its adjustment or refund is paid. The arrears of rent which are claimed by the plaintiff-landlord are for the period from 1.11.2006. It is not the case that Rs.50,000/- is the amount which is liable to be adjusted towards arrears of rent from 1.11.2006. Even assuming but not accepting the submission so made by learned counsel for the petitioner that said amount was liable to be adjusted then the aforesaid adjustment was permissible by way of counterclaim towards earlier suit which

was filed in the year 1991, as admitted according to the parties and not with reference to the subsequent suit. Thus, on this basis the facts of the present case are entirely different than the case of *M/s Sarwan Kumar* (supra), on which reliance is placed by the counsel for the petitioner.

14. Learned counsel for the petitioner further placed reliance upon the judgment rendered by the Apex Court in *G. Reghunathan V. K.V. Varghese,* 2005 (7) SCC 317 and referred to paragraph 15 of the same, which is reproduced as under:-

> Now, the claim under Section 11(2) of the Act. There cannot be any dispute that the tenant had not paid the rent from 5-10-1988 onwards as claimed by the landlord. He had deposited the rent in the proceedings. If he has done so, it is relevant only for considering the question whether he is entitled to relief in terms of Section 11(2)(c) of the Act. The only question is whether the fact that he had paid a sum of Rs. 85,000 as security, which the landlord was liable to refund to him at the time of his vacating the room, could be taken note of as an amount available with the landlord for being adjusted against the rent due. Under Section 8(1) of the Act, the landlord is not entitled to take any premium or other like sum. Under Section 8(2), he could receive or stipulate for payment only, an amount not exceeding one month's rent by way of advance. In both cases, if he has received it, it becomes refundable at once. Hence, it would be an amount available with him. In Issac Ninan v. State of Kerala the High Court has declared that provisions relating to fair rent, that is, Sections 5, 6 and 8 of the Act, put together, are ultra vires the Constitution and are void. The questions may have, therefore, to be considered without reference to Section 8 of the Act. In a case where a substantial amount had been received as advance at the time of letting, which was liable to be refunded without interest on the expiry of the lease, this Court held in Modern Hotel v. K. Radhakrishnaiah that when the amount of arrears of rent was smaller than the advance amount held by the landlord on account of the tenant, there was no default in payment of rent and the grant of eviction on the ground of arrears of rent was not justified. This was reiterated in K. Narasimha Rao v. T.M. Nasimuddin Ahmed. For the purpose of this case, especially when the tenant had pleaded that he had deposited the rent even while filing his objection in the Rent Control Court, we do not think that it is necessary to pronounce finally on this question. We feel that it is only necessary to clarify that the tenant will have two months from today to deposit the rent in arrears till date and the other sums in terms of Section 11(2)(c) of the Act so as to avert the execution of the order for eviction on the ground of arrears of rent granted under Section 11(2) of the Act."

15. A reading of paragraph-15 of the aforesaid judgment itself indicates that

the Supreme Court was considering an eventuality that if the arrears of rent are smaller than the advance amount then the landlord is entitled to adjust the amount and it cannot be said that there had been a default in payment of rent by the tenant so that a decree of eviction could be granted. The facts of the present case, as enumerated above, are entirely different. The earlier suit filed by the landlord in the year 2004 was for eviction as well as for arrears of rent for the period prior to the filing of the suit. As held earlier no adjustment of rent from security deposit was prayed but only interest is claimed.

16. In the earlier suit, copy of which is filed as Annexure P-1, the suit for eviction was also sought on the ground of arrears of rent because according to the plaint allegations the tenant was in arrears of rent from 1.1.2004 to 29.2.2004 at the rate of Rs.1210/- per month. The aforesaid civil suit was withdrawn. While filing the counterclaim the petitioner did not set up any defence that the amount deposited by him of Rs.50,000/- be adjusted by the landlord towards the rent or arrears of rent from the aforesaid amount. That apart, no issues were framed in the counterclaim by the court below with regard to the adjustment of the amount of Rs.50,000/- deposited by the petitioner-tenant. The issues have been filed on record with reference to earlier suit including the counterclaim, which are Annexure P-4.

17. Under the circumstances and also on the basis of the aforesaid facts, I am of the view that the order passed by the learned court below on 24.10.2007 is not contrary to the law. The Court below has given the reasons for rejecting the application filed by the petitioner for stay of the proceedings in the subsequent suits. The two suits are on different footings and in the earlier suit the matter in relation to the subsequent suit is not the matter 'substantially in issue', therefore, the court below has rightly rejected the application filed by the present petitioner.

18. For the reasons stated hereinabove, the present petition is misconceived and it is dismissed accordingly with a cost of Rs.1000/-.

Petition dismissed.

I.L.R. [2008] M. P., 3128
WRIT PETITION
Before Mr. Justice Shantanu Kemkar
27 August, 2008*

KRISHNALAL (DR.) ... Petitioner
Vs.
STATE OF M.P. & ors. ... Respondents

Civil Services (Pension) Rules, M.P. 1976, Rule 9(2), 9(4) - *Order of withholding 30% pension for one year - In D.E. petitioner was found guilty of unauthorized absence and non-compliance of order of transfer -*

*W.P. No.1565/2003 (Indore)

Representation of petitioner against show cause was not found satisfactory - Meanwhile petitioner retired and order of imposing penalty of withholding 30% pension passed after 5 years of his retirement - Held - Departmental proceedings come to an end when disciplinary authority on consideration of enquiry report either exonerate or imposes punishment - Although enquiry report was submitted before retirement but order imposing penalty was passed after 5 years of retirement - Order passed against Rule 9(4) quashed - Petition allowed. (Paras 7 & 8)

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9(2), 9(4) – एक वर्ष के लिए 30 प्रतिशत पेंशन रोकने का आदेश – विभागीय जांच में याची को अनधिकृत अनुपस्थिति और स्थानांतरण आदेश के अपालन का दोषी पाया गया – कारण बताओ सूचनापत्र के विरुद्ध याची का अभ्यावेदन संतोषजनक नही पाया गया – इसी बीच याची सेवानिवृत्त हो गया और 30 प्रतिशत पेंशन रोकने का दण्ड अधिरोपित करने का आदेश उसकी सेवानिवृत्ति के 5 वर्ष बाद पारित किया गया – अभिनिर्धारित – विभागीय कार्यवाहियाँ तब समाप्त होती हैं जब अनुशासनिक प्राधिकारी जाँच रिपोर्ट पर विचार करने पर या तो दण्ड मुक्त करता है या दण्ड अधिरोपित करता है – यद्यपि जाँच रिपोर्ट सेवानिवृत्ति के पूर्व पेश की गई किन्तु शास्ती अधिरोपित करने वाला आदेश सेवानिवृत्ति के पाँच वर्ष बाद पारित किया गया – नियम 9(4) के विरुद्ध पारित आदेश अभिखण्डित – याचिका मंजूर।

Cases referred :

2006(I) MPLJ 412, 2008(I) MPWN 47, AIR 1999 SC 3734.

Amit Agrawal with *Rohit Mangal,* for the petitioner.

Rashmi Pandit, Panel Lawyer, for the respondents.

ORDER

SHANTANU KEMKAR, J. :–Petitioner was working on the post of Deputy Drug Controller in the Public Health and Family Welfare Department of the State Government. A charge sheet dated 05.10.87 (Annexure A/1) was issued to him levelling charge of unauthorised absence and of non compliance of the transfer order dated 13.06.1985. His reply to the charge sheet was not found to be satisfactory and as such the respondents conducted departmental inquiry against him. After recording of the evidence the Inquiry Officer submitted inquiry report on 07.05.1993 (Annexure A/5) holding the petitioner guilty of the charges levelled against him. A copy of the inquiry report was served upon the petitioner along with show cause notice dated 22.07.93 (Annexure A/4). The petitioner submitted a reply/representation (Annexure A/5-A) against the said inquiry report. The respondents after considering the petitioner's representation held that the grounds raised by him in his representation to hold him not guilty are not satisfactory and it was observed that as the petitioner had already retired on 30.04.1997 in the circumstances the order dated 20.10.1996 by which it was decided to impose penalty of withholding of two increments with non cumulative effect could not have been passed against the petitioner, being of no effect upon him, the petitioner has been inflicted penalty of reduction of 30% of his pension for a period of one

year invoking rule 9 (2) of the M.P.Civil Service (Pension) Rule 1976 (for short Rules) vide order dated 15.02.02 (Annexure A/6).

2. Aggrieved by the aforesaid order (Annexure A/6) the petitioner filed Original Application No.251/02 before the M.P.State Administrative Tribunal (for short 'the Tribunal') Bench at Indore. On abolition of the Tribunal the said O.A. has been transferred to this Court for its adjudication and has been renumbered as W.P. No.1565/03.

3. The only point urged by the learned counsel for the petitioner is that the charge sheet was issued to the petitioner on 05.10.87. The order of penalty of withholding of 30% of pension for one year was passed on 15.02.02 that is nearly five years after his retirement on 30.04.97. In the circumstances the impugned penalty order being in violation of Rule 9(4) of the Rules is illegal. He placed reliance on a Division Bench Judgment of this Court passed in case of *State of M.P. and others v. R.L.Ogle and others* 2006(3)JLJ218 = 2006(1) MPLJ 412 and on the order passed by learned Single Judge of this Court in case of *B.P.Shrivastava v. State of M.P.* 2008(1)MPWN47 to contend that the respondents had no right to direct reduction of the petitioner's pension having regard to the fact that the inquiry was not completed by the respondents within a period of two years and the order of penalty has been passed much after the period of two years from the petitioner's date of retirement from service.

4. The respondents on the other hand stated that the inquiry was completed on 07.05.1993 when the inquiry report was received holding the petitioner guilty of the charge. In the circumstance merely because the penalty order has been issued in the year 2002 the same cannot be held to be illegal and contrary to Rule 9 of the Rules.

5. It is not in dispute that the petitioner was issued charge sheet on 05.10.87. In the disciplinary inquiry the inquiry report was submitted on 07.05.1993. However, no order of punishment was issued though on 30.12.1996 (Annexure R/3) the matter was referred to the Public Service Commission seeking guidance in view of the fact that the petitioner was due to retire on 30.04.1997, but no decision was actually taken and the petitioner was allowed to retire. Thereafter an order was issued on 15.02.02 by the respondents by invoking Rule 9 of the Rules and reduced the petitioner's pension by 30% for a period of one year.

6. A Division Bench of this Court interpreting Rule 9 of the Rules in case of *State of M.P. v. R.L.Ogle and others* (supra) has held as under:

> Para 10: "In the present case, the original respondent retired on attaining the age of superannuation on 31.08.1985 and his pension including gratuity was withheld by the authorities under the aforesaid rule 9 of the Rules of 1976, and the original respondent was paid, however, a provisional pension in accordance with the said sub-rule (4) of rule 9 of

the Rules 1976. Any proceeding under rule 9 of the Rules of 1976 for recovery of loss from pension can be instituted only on or after the retirement of a Government servant and by virtue of sub-rule(2) of rule 9, the proceedings against the original respondent could be deemed to have been instituted on the date of his retirement, i.e., on 31.08.1985. Clause (b) of the third proviso of the said sub-rule (4) of rule 9 of the Rules of 1976 makes it amply clear that if the departmental proceedings are not completed within a period of 2 years from the date of institution, the entire amount of pension so withheld shall stand restored on the expiration of the period of 2 years. Thus, the pension that has been withheld in the case of the original respondent stood restored on the expiration of 2 years from the date of institution of the departmental proceedings and no further order on the completion of such 2 years could be passed by the Governor for recovery of the loss of Rs.4,10,071.84 from the original respondent. Thus, even if we hold that the departmental proceedings initiated by the Conservator of Forest did not stand vitiated and the findings in the said departmental proceedings by the disciplinary authority could be placed before the Governor, it will not be possible for the Governor to pass any final order for recovery of the loss of Rs.4,10,071.84 from the original respondent in view of clause (b) of the third proviso to sub-rule (4) of rule 9 of the Rules of 1976."

A learned Single Judge of this Court applying the ratio of the Judgment passed by the Division Bench in the case of *State of M.P. and others v. R.L.Ogle* has held in the case of *B.P.Shrivastava v. State of M.P.* (supra) as under:

Para 5: "The Division Bench of this Court in *State of M.P. and others v. R.L.Ogle and others* [2006(3)JLJ218=2006(1)MPLJ 412] (DB), has decided that if any enquiry against an incumbent is initiated before his retirement then the enquiry as such can be continued in pursuance to Rule 9(2) (a) of Madhya Pradesh Pension Rules, 1976. The Division Bench has further decided that the said enquiry has to be completed by the State Government within a period of two years and in case the enquiry is not completed within a period of two years then the Government shall have no power to impose the penalty of reducing the pension. Thus, in the instant case, the respondents have no right to direct for the reduction the pension of the petitioner or to effect any recovery."

Para 6: "Since the order of punishment by reducing the pension of the petitioner by 5% was passed on 03.07.1996 (Annexure A/22) i.e., much after the period of two years from the date the petitioner retired from the services, therefore, in terms of the judgment passed by the Division Bench of this Court in R.L.Ogle (supra), the respondents will not have

any right to pass an order dated 03.07.1996 (Annexure A/22) reducing the pension of the petitioner"

7. Having regard to the aforesaid legal position I am of the view that the respondents could not have passed the impugned order of reduction of his pension by 30% much after the period of two years from the date of his retirement. The contention of the petitioner that the departmental proceedings were already completed on 07.05.1993 when the inquiry report was received holding the petitioner guilty and therefore the order of penalty could have been passed even after more than two years of petitioner's retirement cannot be accepted. The Supreme Court in case of *Yoginath D.Bagde v. State of Maharashtra* (AIR 1999 SC 3734)=(1999) 7 SCC 739 has held that the departmental proceedings are not concluded on the submission of the inquiry report but it come to an end only when the disciplinary authority on consideration of the report either exonerates or imposes punishment on the delinquent. Admittedly after the submission of the inquiry report a show cause notice was issued to the petitioner. He submitted his representation to it. Thereafter on 30.12.96 the opinion of Public Service Commission about the proposed penalty was sought but no order was passed and in the meanwhile on attaining the age of superannuation the petitioner was retired on 30.04.1997. After about five years of his retirement the impugned order of penalty has been passed on 15.02.02.

8. In the aforesaid circumstance the impugned order of penalty of reduction of petitioner's pension passed on 15.02.02 (Annexure A/6) deserves to be and is hereby quashed. The petitioner be paid the deducted amount of pension with interest on it at the rate of 6% per annum from the date of deduction till payment.

9. The petition is allowed. No order as to costs.

Petition allowed.

I.L.R. [2008] M. P., 3132
WRIT PETITION
Before Mr. Justice Abhay M. Naik
5 September, 2008*

AMARCHAND BAWARIA ... Petitioner
Vs.
UNION OF INDIA & ors. ... Respondents

Right to Information Act (22 of 2005), Section 6, Right to Information (Regulation of Fee and Cost) Rules, 2005, Rules 2(e), 4 - *Competent Authority* - *Cantonment Board prescribed rates for issue of information and copies under R.T.I. Act by passing resolution - Held - Cantonment Board is not a Competent Authority as defined under Rule 2(e) of Rules, 2005 - Resolution prescribing rates beyond powers and had no legal sanctity - Board*

*W.P. No.9264/2007 (Jabalpur)

directed to refund the money received by them in excess of fee liable to paid according to Rules, 2005 to the persons who deposited the money - Petition allowed. (Para 12)

सूचना का अधिकार अधिनियम (2005 का 22), धारा 6, सूचना का अधिकार (फीस और लागत का विनियमन) नियम, 2005, नियम 2(ई), 4 – सक्षम प्राधिकारी – छावनी बोर्ड ने प्रस्ताव पारित कर सूचना का अधिकार अधिनियम के अन्तर्गत जानकारी और प्रतिलिपियाँ जारी करने के लिए दरें विहित कीं – अभिनिर्धारित – छावनी बोर्ड, नियम 2005 के नियम 2(ई) के अन्तर्गत यथा परिभाषित सक्षम प्राधिकारी नही है – दरें विहित करने वाला प्रस्ताव शक्तियों के परे और कोई विधिक शुद्धता नही रखता था – बोर्ड को उनके द्वारा नियम 2005 के अनुसार देय फीस के अतिरिक्त प्राप्त फीस, उन व्यक्तियों को, जिन्होंने धन जमा किया, वापस करने के निदेश दिये गये – याचिका मंजूर।

R.P. Kanojiya, for the petitioner.
Dharmendra Sharma, A.S.G., for the respondent Nos.1 & 2.
P. Shankaran, for the respondent Nos.3 & 4.

ORDER

ABHAY M. NAIK, J. :–Cantonment Board, Jabalpur passed resolution no. 37 prescribing thereby the rates for issue of information and copies under the Right to Information Act (hereinafter referred to as "the Act" for convenience) which is on record as Annexure P/2. Petitioner has challenged it for want of powers and jurisdiction being violative of the provisions of the said Act and rules made thereunder.

2. Following reliefs have been claimed by the petitioner.

"(i) That the Hon'ble Court may issue a writ of mandamus by quashing the resolution No. 37 passed by the Cantonment Board, Jabalpur on 20.12.2005 Annexure P/2.

(ii) That the Hon'ble Court may also direct the respondent no. 3 to refund the amount taken from other applicants who have applied Under Right to Information Act, 2005.

(iii) That the Hon'ble Court may direct the respondent no. 3 to intimate the applicants whose amount is to be returned.

(iv) That the Hon'ble Court may direct the respondent no. 1 to take disciplinary action against the Chief Executive Officer of the Cantonment Board, Jabalpur who had taken illegal amounts for giving copies under the Right to Information Act, 2005."

3. No facts of the writ petition in particular are needed to be mentioned except that Right to Information Act, 2005 came into force with effect from 15th of June, 2005. Under section 6 of the Act, a person, desirous of obtaining information under the Act shall make an application accompanied by such fee as may be prescribed. Information is liable to be provided on payment of such fee as may be

prescribed. In exercise of powers conferred by clause (b) and (c) of sub-section (2) of Section 27 of the Act, the Central Government made the Right to Information (Regulation of Fee and Cost) Rules, 2005 (hereinafter referred to as "the Rules" for convenience). Rule 4 prescribes the charges as follows:-

> 4. For providing the information under-section (1) of Section 7, the fee shall be charged by way of cash against proper receipt of by demand draft or bankers cheque payable to the Accounts Officer of the public authority at the following rates:-
>
> (a) rupees two for each page (in A4 or A3 size paper) created or copied;
>
> (b) actual charge or cost price of a copy in larger size paper;
>
> (c) actual cost or price for samples or models; and
>
> (d) for inspection of records, no fee for the first hour; and a fee of rupees five for each subsequent hour (or fraction thereof).

4. Cantonment Board Jabalpur passed resolution no. 37 dated 20.12.2005 prescribing thereby Rs.50/- per copy per page for copy of document of A4 size. Similarly, other rates of cost were also prescribed by the said resolution.

5. Contention of the petitioner is that the said resolution prescribing fee and cost at higher side in contravention of the fee and cost Rules is illegal being beyond the powers and the same is liable to be quashed.

6. Petitioner sought certain information by submitting application under section 6(1) of the Act vide Annexure P/3 dated 4.5.2007. He was asked to deposit Rs.650/-towards cost for providing information vide Annexure P/4 dated 30th of May, 2007. This compelled the petitioner to submit the writ petition with the reliefs mentioned hereinabove.

7. Respondent no. 1 as well as nos. 3 and 4 submitted their separate replies. It is contended by learned counsel for the respondent no. 1 that the petition having preferred without exhausting statutory remedies available to the petitioner is not liable to be entertained. Section 19 of the Act provides for an appeal to an Officer senior in rank to the Central Public Information Officer and also provides for a second appeal to the Central Information Commission. This apart, section 18(d) of the Act empowers the Central Information Commission to receive and enquire into any complaint with regard to amount of fee. Petitioner without availing the aforesaid remedies has moved in writ jurisdiction in a prematured manner. On merits, it is contended that the Cantonment Board, Jabalpur has determined the schedule of fees looking to the schedule adopted by the M.P. Government and the Hon'ble High Court of M.P., Jabalpur. The Cantonment Board, Jabalpur had done so as the expenses incurred in issuing copies and information were much higher than the fees being paid by the applicants seeking information. The Cantonment Board, Jabalpur being a local body akin to the Municipal Corporation adopted the Schedule of fees existing for the Municipal Corporations in the State of M.P.

However, during pendency of this writ petition, on receipt of representation from various sections of people containing request for reduction of fee, the Cantonment Board, Jabalpur has withdrawn its resolution no. 37 dated 20.12.2005 vide resolution no. 6 dated 13.9.2007.

8. In the counter reply on behalf of respondents no. 3 and 4, it is contended that under section 57 of the Cantonments Act, 2006, the Central Government has got the power to review any decision or order of the Board and to pass such order thereon as it may deem fit. Accordingly, the petitioner could have made a representation to the Central Government. This apart, under section 18(1)(d) of the Act, petitioner could have made a representation before the Central Information Commission. Thus, without invoking the aforesaid remedies, the present writ petition is liable to be dismissed being premature and for not availing the alternative remedy.

On merits, it is contended that the information is sought at times from various old records more than 50 years old. It requires involvement of staff which is already short. Considering these and various other aspects, reasonable cost for providing information has been prescribed vide resolution no. 37 dated 20.12.2005 which is within the powers of the Cantonment Board, Jabalpur being municipal body. It has been mentioned specifically that the Hon'ble High Court has fixed minimum fees of Rs.50/- per application in case of general application, Rs.500/- in case of information related to tenders, documents, bids, business regulations and the actual cost of medium or printing cost price in case of other documents vide no. 15-R(J) dated 10th of January, 2006 copy of which is on record as Annexure R/2. However, during pendency of the writ petition, Cantonment Board, Jabalpur acceded to the request of various sections of people and withdrew resolution no. 37 dated 20.12.2005 vide resolution no. 6 dated 13.9.2007. Accordingly, it is contended that this petition has been rendered infructuous.

9. Although resolution in question has already been withdrawn, in view of the stand taken by the respondents that the resolution no. 37 was rightly passed and further in view of the relief for refund of costs, it is thought proper to decide the issue raised herein.

10. Rule making powers are provided by virtue of sections 27 and 28 of the Act. They read as follows:-

> Sec. 27. Power to make rules by Appropriate Government-(1) The Appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.
>
> (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
>
> (a) the cost of the medium or print cost price of the materials to be disseminated under sub (4) of section 4;

(b) the fee payable under sub-section (1) of section 6;

(c) the fee payable under sub-sections (1) and (5) of section 7;

(d) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16;

(e) the procedure to be adopted by the Central Information Commission or State Information, as the case may be, in deciding the appeals under sub-section (10) of section 19; and

(f) any other matter which is required to be, or may be, prescribed.

Sec. 28. Powers to make rules by competent authority- (1) the Competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(i) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;

(ii) the fee payable under sub-section (1) of section 6;

(iii) the fee payable under sub-section (1) of section 7; and

(iv) any other matter which is required to be, or may be,, prescribed.

11. Fee and Cost Rules, 2005 have been framed by the Central Government in exercise of its power under clause (b) and (c) of subsection (2) section 27 of the Act. Section 28 empowers a competent authority to make rules to carry out the provisions of the Act. The term "Competent Authority" has been defined in clause (e) of section 2 of the Act in the following manner:-

2(e) "competent authority" means-

(i) the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States of a Legislative Council of States;

(ii) the Chief Justice of India in the case of Supreme Court;

(iii) the Chief Justice of High Court in the case of a High Court;

(iv) the President of the Governor, as the case may be, in the case of other authorities established or constituted by or under the constitution;

(v) the administrator appointed under article 239 of the Constitution;

12. It has been contended by the respondents in the return that the Cantonment Board is a local body like Municipal Council and is well competent to make the

rules regarding fees and cost as made by this court. Suffice to say that the Chief Justice of the High Court is a competent authority within the ambit of definition as contained in section 2(e) of the Act and therefore, by virtue of section 28 he has powers to make rules with regard to fees and cost in exercise of powers under section 28 of the Act. Cantonment Board, Jabalpur being outside the purview of the term of 'competent authority' within the meaning of section 2(e) of the Act is not competent like the Chief Justice of High Court to make rules.

13. In this view of the matter the subject resolution no. 37 dated 20.12.2005 was without any power and had no legal sanctity. Reliance on the prescription of fee and cost by High Court is absolutely incorrect and misconceived because of the competency of the High Court by virtue of section 28 read with section 2(e) of the Act. Since resolution no. 37 has already been withdrawn it is not required to be quashed.

14. Since resolution no. 37 was beyond the powers, realization/ receipt of money in excess of Fee and Cost Rules is equally illegal and by no stretch of imagination, respondent nos. 3 and 4 may be permitted to retain money contrary to their entitlement. Thus, the money received by the respondents no. 3 and 4 in excess of the money liable to be paid according to Fee and Cost Rules is liable to be refunded to the persons who deposited the money.

15. In the result, the writ petition is allowed holding that the resolution no. 37 dated 20.12.2005 was beyond the powers. Respondents no. 3 and 4 are hereby directed to refund the excess money within three months after issuing advertisement in the newspaper having considerable circulation for seeking refund of excess money.

Parties to bear their own costs.

Petition allowed.

I.L.R. [2008] M. P., 3137

WRIT PETITION

Before Mr. Justice Viney Mittal

8 September, 2008*

JASWANT BHAI DOSHI ... Petitioner

Vs.

INDORE MUNICIPAL CORPORATION & ors. ... Respondents

Constitution, Article 226 & 300A - *Right to property* - *Whether the ownership land of the petitioner can be utilized by the Municipal Corporation for widening road without following the due procedure in accordance with law - Held - Right to own and retain property being not only a constitutional right but also human right - Petitioner cannot be deprived of said right except by following due process of law - The land has to be acquired by paying compensation at market rate - Petition allowed.* (Para 12)

*W.P. No.3185/2008 (Indore)

संविधान, अनुच्छेद 226 व 300ए – सम्पत्ति का अधिकार – क्या याची के स्वामित्व की भूमि का उपयोग नगर निगम द्वारा सड़क चौड़ी करने के लिए विधि की सम्यक् प्रक्रिया का पालन किये बिना किया जा सकता है – अभिनिर्धारित – सम्पत्ति के स्वामित्व और प्रतिधारित करने का अधिकार न केवल संवैधानिक अधिकार है बल्कि मानव अधिकार भी है – विधि की सम्यक् प्रक्रिया के पालन के बिना याची को उक्त अधिकार से वंचित नही किया जा सकता – बाजार दर से प्रतिकर अदा करके भूमि अधिग्रहीत की जानी चाहिए – याचिका मंजूर।

Case referred :

(2007) 8 SCC 705.

G.M. Chaphekar with *Vandana Kasrekar,* for the petitioner.
Anand Agrawal, for the respondent Nos.1 & 2.
Anand Pathak, Dy.G.A., for the respondent No.3.
Manoj Dwivedi, for the respondent No.4.

ORDER

VINEY MITTAL, J.(ORAL).:–This order shall dispose of seven writ petitions being WP No. 3185 of 2008, WP No. 4818 of 2008, WP No. 4837 of 2008, WP No. 4389 of 2008, WP NO. 4881 of 2008, WP No. 5027 of 2008 and WP No. 5028 of 2008, as the controversy in all these cases is identical and similar arguments have been addressed before this Court. For the sake of convenience, the facts are borrowed from WP No. 3185 of 2008.

2. The petitioner is the sole proprietor of the firm M/s Metal Equipment Enterprises and had purchased land bearing survey No. 176 measuring one acre, situated at Pipliyarao, Tehsil and District Indore, from the original owner Harakchand Naluja Shah through a registered sale- deed dated March 1, 1972. A copy of the aforesaid sale deed has been appended as Annexure P-1 with the present petition.

3. After having become the owner of the said land, the petitioner constructed a shed on the said land after getting the plan sanctioned from the Competent Authority of Indore Municipal Corporation (hereinafter referred as the respondent-corporation). The petitioner also claims that he is regularly paying the property tax qua the said property to the respondent-corporation. In a portion of the said property, one Praveen Bhai Patel, who had taken that portion on rent is running a vehicle service station.

4. The petitioner was surprised to receive a notice dated May 26, 2008 from corporation-respondent No. 2, which was also addressed to Patel Motors, directing them to remove the compound wall, situated on 264.80 sq.mt. of the land, within a period of seven days from receipt of the said notice. A copy of the said notice has been appended as Annexure P-3 with the petition.

5. It has been claimed by the petitioner that issuance of the said notice was absolutely without any authority and jurisdiction, in as much as, the land in question was absolute ownership of the petitioner, and having never been acquired by the State Government, Indore Municipal Corporation or Indore Development Authority,

and the petitioner having never received any compensation for the land or for the construction raised thereupon, could not have been dispossessed from the said land nor the construction raised by him could be demolished. The petitioner approached this court earlier, through a writ petition being WP No. 2995 of 2007. The writ petition filed by the petitioner was disposed of by this Court vide order dated November 12, 2007. A liberty was granted to the petitioner to file a representation before the Indore Municipal Corporation and correspondingly the corporation was directed to adjudicate the pleas raised by the petitioner through the said representation and not to take any action of demolition etc. till the matter was finally decided by the corporation.

6. The petitioner has pleaded that in terms of the liberty granted to him, he filed a detailed representation on November 16, 2007, Annexure P-5. The petitioner was called for personal hearing by the Commissioner, Municipal Corporation on January 24, 2008. Even a representative of the Patel Motors was also called for hearing. However, an order dated April 17, 2008 has subsequently been communicated to the petitioner, in which, the representation filed by the petitioner has been rejected by the corporation and the petitioner has been directed to demolish the wall in question, failing which, the corporation has directed that the demolition shall be done by it.

7. It is in these circumstances that the petitioner has approached this Court through the present petition, yet again.

8. Inspite of a couple of opportunities granted in this regard, no reply has been filed by the respondents. In these circumstances, the arguments in the main case have been heard in absence of the reply.

9. I have heard Shri G.M. Chaphekar, learned senior counsel for the petitioner, Shri Anand Agrawal, learned counsel for respondents No. 1 and 2, Shri Anand Pathak, learned Deputy Govt. counsel for respondent No. 3 and Shri Manoj Dwivedi, learned counsel for respondent No. 4 and with their assistance, have also gone through the record of the case.

10. At the outset, it may be noticed that a perusal of the impugned order dated April 17, 2008, passed by the Commissioner, Municipal Corporation, shows that various objections raised by the petitioner have been duly noticed by the Commissioner of the Corporation. The aforesaid order also shows that the land of the petitioner was required for widening of the road, a project which is being executed by Indore Development Authority on behalf of Indore Municipal Corporation. The Commissioner has also noticed the necessity of removal of the construction of the petitioner for the purposes of the aforesaid widening. As a matter of fact, the Corporation has offered an enhanced FAR (Floor Area Ratio) to the petitioner qua the land in question. The aforesaid offer appears to have been made by the corporation merely as an incentive to the petitioner not to claim compensation qua his ownership land. Apparently, the petitioner has not accepted the aforesaid offer of the corporation and has chosen to approach this Court through the present petition.

11. The question, which arises for consideration before the Court is to whether the ownership land of the petitioner can be utilized by the corporation and as to whether the petitioner can be dispossessed from the aforesaid owned land without payment of any compensation and without following the due procedure, in accordance with law.

12. At the outset, it may be relevant to notice that it has observed by the Apex Court in the case of *Chairman Indore Vikas Pradhikaran Vs. Pure Industrial Coke and Chemicals Ltd. and others* (2007) 8 SCC 705 that right of property had ceased to be a fundamental right but all the same, it is a constitutional right under Article 300-A of the Constitution of India and as a matter of fact, a right to own property and enjoy the same is also a human right. In these circumstances, once the petitioner is concededly the owner of the property in question, then his right to own and retain the said property being not only a constitutional right, but also his human right, by any stretch of imagination, the petitioner cannot be deprived of the aforesaid rights, except by following the due procedure of law. It would have been absolutely a different matter, if there was no dispute between the parties and the offer of the enhanced FAR would have been accepted by the petitioner. The petitioner can always willingly and voluntarily handover his ownership land to the corporation for widening of the road, without payment of any compensation. However, if the petitioner, being the owner of the said property, has chosen not to surrender the land willingly and voluntarily, he cannot be forced to surrender the same under threat of the demolition. The land has to be first acquired, in accordance with law. A compensation, as per market value, has to be paid. The procedure established by law has to be followed. Nothing has been done in this regard by the respondents. The Court just cannot close its eyes to the wholly unauthorized action of the respondents, in attempting to deprive a citizen of his constitutional and human rights, merely because of the fact that the land of such citizen is required for a public purpose i.e. for widening the road. Even requirement of the land for a public purpose postulates the acquisition thereof, on payment of just compensation.

13. Consequently, the present petition is allowed and the order dated April 17, 2008, Annexure P-7 passed by the Commissioner, Indore Municipal Corporation is set aside. It is directed that the petitioner shall not be deprived of his property and dispossessed from the same, in any manner, except in accordance with law, by following the due procedure.

14. Before parting with this order, however, it is made clear that if and when the parties choose to do so by a mutual agreement, it would be open to the petitioner to surrender his land willingly and voluntarily, and thereafter it would be open for the corporation to use the same for widening of the road.

C.c. as per rules.

Petition allowed.

I.L.R. [2008] M. P., 3141

WRIT PETITION

Before Mr. Justice Sanjay Yadav

9 September, 2008*

FOOD CORPORATION OF INDIA ... Petitioner

Vs.

ASSISTANT COMMISSIONER OF SALES TAX & ors. ... Respondents

General Sales Tax Act, M.P. 1958 (2 of 1959), Section 43(1) - *Whether imposition of penalty u/s 43(1) of the Act without establishing mens rea would be justified - Held - An existence of a guilty mind with inaccurate return would lead to imposition of penalty and not alone the inaccurate return - Petition dismissed.* (Para 10)

साधारण विक्रय–कर अधिनियम, म.प्र. 1958 (1959 का 2), धारा 43(1) – क्या आपराधिक मनःस्थिति स्थापित किये बिना अधिनियम की धारा 43(1) के अन्तर्गत शास्ति का अधिरोपण न्यायोचित होगा – अभिनिर्धारित – दूषित मन के अस्तित्व के साथ गलत विवरणी होने पर शास्ति का अधिरोपण किया जायेगा न कि केवल गलत विवरणी पर – याचिका खारिज।

Cases referred :

22 VKN 28, (1983) 16 VKN 275, AIR 1970 SC 253, (1980) 45 STC 197(SC), (1965) AC 486, AIR 2000 SC 1102, (1985) 1 QB 918.

Mukesh Agrawal, for the petitioner.

G.P. Singh, G.A., for the respondents.

ORDER

SANJAY YADAV, J. :–Short but a substantial question raised in present writ petition is as to whether an imposition of penalty under Section 43(1) of M.P. General Sales Tax, 1958 (for short "the Act of 1958") without establishing a mens-rea would be justified.

2. The facts in nutshell are that the petitioner is a statutory undertaking of the Government of India carrying on business in food grains and a registered dealer under the Act of 1958.The petitioner was assessed to Sales Tax for period 1.4.1981 to 31.3.1982 by order dated 19.8.1985, whereof, a penalty of Rs.7,73,000/- was imposed under Section 43(1) of the Act of 1958. The imposition of penalty was for the reason that the petitioner had paid less tax. Being aggrieved, petitioner preferred an appeal, whereof, by order dated 14.11.1986, the matter was remitted on the question of penalty and on some other points. This order was put to challenge before the Board of Revenue; whereupon the Board declined to entertain being premature. By its order dated 3.2.1988, the assessing officer after remand, passed an order dated 19.3.1991 imposing a penalty of Rs.7,72,325/-. An appeal preferred against this order met with negative result by order dated 31.7.1991, and the revision under Section 39(1) of the Act of 1958 met with same fate by order dated 7.9.2000.

*W.P. No.353/2001 (Jabalpur)

It is this order, which is being put to challenge and the challenge is confined to the imposition of penalty under Section 43(1) of the Act of 1958.

3. It is urged on behalf of the petitioner, that the facts and circumstances of the case did not warrant imposition of penalty under Section 43(1) of the Act of 1958, which could be only after establishing a mens-rea and the assessee being a Government of India undertaking, mens-rea ispo-facto cannot be inferred. The learned counsel for the petitioner, while placing reliance on the case of *Food Corporation of India V. Commissioner, Sales Tax*: 22 VKN 28 contended that the authorities below committed an error in not accepting the explanation offered for the differences between the tax assessed and tax returned on erroneous interpretation of Section 43 of the Act of 1958. It is accordingly, stated that the penalty imposed under Section 43(1) of the Act of 1958 is bad in the eyes of law, and therefore, the same deserves to be set aside.

4. Learned Government Advocate appearing for the Revenue however, supported the order under challenge and, contended that the petitioner is a habitual evader of tax and the mens-rea was writ large in the action of the petitioner which deliberately did not furnish accurate particulars of its turn over and paid less tax. Placing reliance on the return, that, while conducting the proceedings of assessment and on being prima-facie satisfied, regarding the fact of submission of incorrect returns, as well as revised return by the petitioner corporation to show cause as to why the penalty be not imposed under Section 43 of the Act of 1958 and after satisfying itself of the intention of the assessee of the concealment of the true and correct facts and figures, the penalty under Section 43(1) of the Act of 1958 was imposed. It is stated that the explanation tendered by the petitioner corporation were not sufficient enough to absolve it from the charge of suppression, the action of suppression, it is submitted, loudly suggested about the mens-rea. Accordingly, it is urged, that there is no discrepancy in the imposition of penalty. The respondents relied upon the judgment rendered by this Court in the matter of *Food Corporation of India Bhopal Vs. Commissioner of Sales Tax, Madhya Pradesh* (1983) 16 VKN 275. It is further contended that the petitioner was under statutory obligation to have furnished accurate returns and that having not been done on the ground that it is a vast organization will not in itself be a ground for absolving the petitioner from penalty. Section 43 of the Act of 1958, it is contended, contemplates a show cause notice and a decision thereafter taking into consideration the explanation tendered. In the instant case, it is stated that, the explanation being not satisfactory, the penalty has been imposed. The learned Govt. Advocate attempts to distinguish the judgment of (22) VKN 28 on the ground that the issue in said case was whether a penalty under Section 43 can be imposed without considering the explanation or without recording a finding that the explanation offered by the assessee was false or not acceptable. Whereas in the instant case, it is stated that a proper opportunity was afforded to the petitioner and its only after considering the explanation tendered that an order of penalty was inflicted, which cannot be found fault with.

4. Considered the rival submissions.

5. Before entering into rival submissions worth it would be to take note of Section 43 of the Act of 1958 which is in the following terms:-

> 43. Power of Commissioner or appellate authority to impose penalty-
>
> (1) If the Commissioner or the Appellate Authority in the course of any proceedings under this Act is satisfied that the dealer has concealed his turnover or the aggregate amount of purchase prices in respect of any goods or has furnished inaccurate particulars of such sales or purchases, as the case may be, or furnished a false return, the Commissioner or the appellate authority as the case may be, after giving the dealer a reasonable opportunity of being heard, may direct that the dealer shall in addition to the tax payable by him, pay by way of penalty a sum, which shall not be less than 20 percent but shall not exceed one and one-half times the amount of the tax, if any, which would have been avoided if the returns furnished by the dealer had been accepted as correct or the concealment of the sales of purchases or inaccurate particulars of sales of purchases had not been detected.
>
> (2) If the total tax returned by the dealer is less than 80 percent of the total tax assessed under Section 18, such dealer shall be deemed to have concealed the particulars of his turnover or aggregate of his purchase prices for the purposes of this Section unless he proves that the failure to return the correct turnover or aggregate of purchase prices did not arise from any fraud or gross or willful negligence on his part.

6. The provision contemplates imposition of penalty in case dealer has concealed his turnover on the aggregate amount of purchase prices in respect of any goods or has furnished inaccurate particulars of such sales or purchases, or furnished a false return, the provision being penal in character, mens-rea would be accurate return and unless the Commissioner or the appellate authority is satisfied that the inaccurate return was infested with mens-rea no penalty can be imposed.

7. Similar and other provisions have been considered by the Supreme Court and by this Court in various cases.

8. In the case of *M/S Hindustan Steel Ltd. Vs. State of Orissa* :AIR 1970 SC 253, wherein paragraph 7 their Lordships of the Supreme Court were pleased to observe:

> "7.Under the Act penalty may be imposed for failure to register as a dealer: Section 9(1) read with Section 25(1) (a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceeding,

and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be. imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty to be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows a bona fide belief that the offender is not liable to act in the manner prescribed by the statue".

9. Similarly, in the case of *The Cement Marketing Co. of India Ltd. Vs. Asst. Commissioner Sales Tax, Indore and others,* (1980) 45 STC 197(SC), the Supreme Court while construing the old provisions of Section 43, observed that Section 43 of the Act, "providing" or imposition of penalty is penal in character and unless the filing of an inaccurate return is accompanied by a guilty mind, the Section cannot be invoked for imposing penalty. Their lordships were pleased to observe at page 200 as under:

"It is possible that even where the incorrectness of the return is claimed to be due to want of care on the part of the assessee and there is no reasonable explanation forthcoming from the assessee for such want of care, the court may, in a given case, infer deliberateness and the return may be liable to be branded as a false return. . . .

It is elementary that section 43 of the Madhya Pradesh General Sales Tax Act, 1958, providing for imposition of penalty is penal in character and unless the filing of an inaccurate return is accompanied by a guilty mind, the section cannot be invoked for imposing penalty."

10. The principle of law which emerges from various authorities that an existence of a guilty mind with inaccurate return would lead to imposition of penalty and not alone the inaccurate return.

11. The principle regarding existence of guilty mind is expressed in the maxim-Actus non-facit reum nisi mens-sit-rea, meaning thereby the intent and act must both concur to constitute the crime (hereinafter referred to as mens-rea). By mens-rea is meant some blameworthy mental condition, whether constituted by knowledge or intention or otherwise when a statute, as the present one, creates that an inaccurate return would be an offence and as has been held in catena of cases, noted supra, that only an existence of a guilty mind would lead to an imposition of penalty. The question than arises as to what are the conditions which must be satisfied, if the presumption as to mens-rea is to be rebutted. According to Lord Evershed, then, two conditions must be satisfied, viz, strict liability must

be "required to give practical effect to the legislative intention" and the person charged with a breach of the statutory requirements must have had some opportunity of furthering their observance (please see *Vane V. Yiannopoullos* (1965) AC 486 per Lord Evershed page 500: quoted in Maxwell on the Interpretation of Statues: Twelfth Edition by P.St. J.Langan : at page 124).

12. The Supreme Court in the case of *Union of India Vs. Ganesh Das Bhoraj:* AIR 2000 SC 1102, while approving the opinion of Wright J in *Sherras V.D. Rutzen:* (1985) 1 QB 918, 922, observed that the doctrine that mens-rea is an essential ingredient in every offence has three recognized exceptions: (i) cases not criminal in any real sense but which in the public interest are prohibited under a penalty, (ii) public nuisance; and (iii) cases criminal in form but which are really only a summary mode of enforcing a civil right.

13. In the case at hand the petitioner, a registered dealer, is under a statutory obligation to furnish accurate particulars of sales and purchase and an inaccurate particulars renders him liable for penalty, subject to, the explanation about inaccurate particulars. The explanation which is tendered by the petitioner in response to a show cause notice discloses the fact that the branches of the petitioner being located at various places it takes time to collect the information regarding sales and purchase and the discrepancies/differences is observed after the completion of audit. The explanation was considered by the assessing officer in the following terms:

> "करदाता द्वारा प्रस्तुत स्पष्टीकरण का परिशीलन किया गया। यह स्पष्ट है कि करदाता एक बड़ी संस्थान है। जिसकी जानकारी कई संस्थाओं से प्राप्त कर विवरण प्रस्तुत करना होते हैं, वहाँ यह भी सच है कि इस कार्य को पूर्ण करने के लिये संस्थान के पास बहुत से अधिकारियों एवं कर्मचारियों की संख्या है एवं सही खरीदी बिक्री का विवरण प्रस्तुत करना संस्थान का दायित्व है। इस तथ्यों से इस आधार पर मुक्ति प्रदान नहीं हो सकती है कि संस्थान बहुत बड़ा है। करदाता द्वारा पुनरीक्षित विवरणपत्र प्रस्तुत किया गया है, वह भी सही प्रस्तुत नहीं किया गया है क्योंकि इस विवरण पत्र में कर योग्य विक्रय राशि रूपये 52,58,70,169.00 की दर्शाई गई है क्योंकि कर निर्धारण के समय कर योग्य विक्रय राशि रूपये 61,53,89,536.00 की दर्शाई गई है इसलिए यह विवरण पत्र भी जो काफी दिनों के पश्चात् प्रस्तुत किया गया है वह भी यही प्रस्तुत नहीं किया गया है। यहीं यह बात और भी उल्लेखनीय है कि करदाता द्वारा की विक्रय वसूली के आंकड़े प्रस्तुत किये गये है उनको देखने से यह स्पष्ट है कि कर निर्धारण अवधि में कर दाता द्वारा रूपये 2,04,77,970.00 का विक्रय कर वसूल किया गया है। विक्रय कर के खाते को देखकर ही करदाता यह पता लगा सकते थे कि उनके द्वारा कितना कर वसूल किया गया है एवं कितना कर जमा किया गया है। जाके कर वसूल किया गया था उस सीमा तक भी विक्रयकर जमा नहीं किया गया है। इससे स्पष्ट है कि करदाता द्वारा इस ओर कोई ध्यान नहीं दिया गया। जो विवरण पत्र प्रस्तुत किये गये हैं वे भी सही नहीं है अर्थात असत्य है। यदि वसूल किये गये विक्रयकर को ही ध्यान में रखा जाता तो भी इस बात

का आसानी से पता लगाया जा सकता था कि प्रस्तुत किये गये विवरणपत्र सही नहीं है। यद्यपि जो विक्रयकर वसूल किया गया है उसमें कुछ विक्रयकर गत वर्ष से भी संबंधित है फिर भी करदाता का यह दायित्व था कि वे वसूल किये गये विक्रयकर का विश्लेषण उसे एवं यह देखते कि उनके द्वारा जो विक्रयकर वसूल किया जा रहा है वह विक्रयकर विभाग को शासकीय खजाने में क्यों न जमा किया जायें। इसके अतिरिक्त जहां तक क्रय कर का संबंध है इस बात से इंकार नहीं किया जा सकता है कि करदाता द्वारा कर निर्धारण अवधि में रूपये 95,73,764/– कि खड़ी दलहन आंवचित व्यवसाईयों से क्रय की गई है तथा रूपये 1,62,04,486.00 कि खड़ी दलहन .... से क्रय की हुई करदाता के पास थी। करदाता स्वयं इस बात को स्पष्ट नहीं कर सके कि इस खरीदी गई बड़ी दलहन का उपयोग क्या करदाता द्वारा किया गया। यदि यह निर्माण में उपयोग नहीं की गई थी तो कहां गई। .... करदाता द्वारा विवरणी प्रस्तुत करते समय इस तथ्य को विचार में नहीं किया गया कि जो आंजीपत व्यवसाईयों से क्रय की गई दलहन उनके पास है उसका सिर्फ किस प्रकार किया गया। यदि करदाता विवरणपत्र प्रस्तुत समय इस तथ्य को विचार में लेते तो यह निष्कर्ष सहज निकल सकता था कि अपंजीयत व्यवसाईयों से क्रय की गई दलहन दालों के निर्माण में उपयोग की गई है। करदाता का जहां तक यह कथन है कि उनकी यह मान्यता में कि मध्यप्रदेश के बाहर से खड़ी दलहन भेजी गई है। वह मध्यप्रदेश से बाहर से आयातित है, मान्य नहीं की सकती क्योंकि सामान्यतः यह नहीं होता है कि जो माल मध्यप्रदेश के बाहर से बुलाया जाता है उसी माल को मध्यप्रदेश के बाहर भेजा जाए। ऐसा करने में आवश्यक ट्रान्पोर्टेशन एवं परिवहन का खर्चा संस्थान को उठाना पड़ता है। ऐसी स्थिति में किसी स्पष्ट साक्ष्य के अभाव में यह मान्य करना उचित नहीं होगा कि मध्यप्रदेश के बाहर से दलहन बुलाई गई थी एवं मध्यप्रदेश के बाहर दलहन भेज दी गई। यह बात रिकार्ड से भी प्रमाणित नहीं होती है। इस प्रकार करदाता द्वारा लगभग रूपये 30 लाख विवरणपत्रों के साथ कम जमा किया गया है एवं करदाता एक व्यवसायिक संस्थान है अतः इस राशि का करदाता द्वारा अपने स्वयं के व्यवसाय में उपयोग किया है. जबकि यह राशि संस्थान द्वारा अन्य व्यवसाईयों से वसूल की गई है इस कारण से इस राशि को इतने समय तक अपने पास रखने का करदाता को कोई वैधानिक अधिकार नहीं था। विवरण पत्र दोषी मन से प्रस्तुत किये गये या नहीं, यह एक मनःस्थिति है जिसके संबंध में कोई सीधा प्रमाण प्रस्तुत नहीं किया जा सकता है किन्तु धारा 43(1) के अंतर्गत दोनों प्रकार की स्थितियाँ कर होती है। प्रथम तो खरीद बिक्री का छुपाया जाना द्वितीय खरीद बिक्री के इन्एक्यूरेट विवरणपत्र प्रस्तुत करना। तो यह तो स्पष्ट है कि करदाता द्वारा खरीदी बिक्री इनएक्यूरेट विवरणपत्र प्रस्तुत किये गये हैं अतः यथोचित कारण के अभाव में असत्य एवं इनएक्यूरेट विवरणपत्र प्रस्तुत करने के लिए कर की राशि को दृष्टिगत रखते हुए जिसको करदाता द्वारा क्रेताओं से वसूल करके अपने पास लगभग 3 वर्ष तक रखा है एवं उसका व्यापार में उपयोग किया है धारा 43(1) के अंतर्गत शास्ति रूपये 7,73,000/– आरोपित की जाती है। यह आरोपित शास्ति संशोधित धारा 17(3) की शास्ति के समकक्ष ही है।"

14. Having thus considered, and keeping in view the fact that an opportunity to

explain was afforded to the petitioner and after considering the explanation tendered by the petitioner the competent authority being satisfied that no plausible explanation is tendered by the assessee petitioner and having regard to the judgment rendered by this Court in the case of *Food Corporation of India Bhopal Vs. Commissioner of Sales Tax, Madhya Pradesh:* (1983) 16 VKN 275, this Court does not find any substance in the challenge put forth to the order imposing penalty under Section 43(1) of the Act of 1958.

15. In the result the petition fails and is hereby dismissed. No costs.

Petition dismissed.

I.L.R. [2008] M. P., 3147
WRIT PETITION
Before Mr. Justice Viney Mittal
12 September, 2008*

MANDAKINI RAVERKAR (SMT.) ... Petitioner
Vs.
STATE OF M.P. & ors. ... Respondents

Constitution, Article 226 - ***Money deposites by senior citizens in Bank*** *- Petitioners are senior citizen and had deposited savings of their entire life in Bank - On account of irregularities, RBI cancelled licence of the Bank and put under liquidation - Official liquidator provided amount to discharge liability of Bank - Part payment made to petitioners - Release of balance amount to petitioners withheld by liquidator till money advanced by Guarantee Corporation was return back - Held - Petitioners are not millionaires ever expecting to multiply money by making commercial or speculative investments - Official liquidator directed to release the deposited amount of petitioners at first instant - Petition allowed.* (Paras 13 & 15)

संविधान, अनुच्छेद 226 – **सीनियर सिटीजन द्वारा बैंक में जमा राशि** – याची वरिष्ठ नागरिक हैं और उन्होंने अपने सम्पूर्ण जीवन की बचत बैंक में जमा की थी – अनियमितताओं के कारण भारतीय रिजर्व बैंक ने बैंक का लायसेंस रद्द किया और परिसमापन के अधीन रखा – शासकीय समापक ने बैंक के दायित्वों को पूरा करने के लिए राशि का प्रबंध किया – याचियों को आंशिक भुगतान किया गया – परिसमापक द्वारा याचियों को शेष राशि की निर्मुक्ति गारंटी कॉर्पोरेशन द्वारा दिया गया धन वापस प्राप्त होने तक रोक ली गई – अभिनिर्धारित – याची लखपति नही हैं और उन्होंने वाणिज्यिक या सट्टे वाला निवेश करके धन बढ़ाने की कभी भी प्रत्याशा नही की – शासकीय परिसमापक को प्रथमतः याचियों की जमा राशि निर्मुक्त करने के निदेश दिये गये – याचिका मंजूर।

Cases referred :

(1979) 2 SCC 274, (1978) 4 SCC 47

Vandana Kasrekar, for the petitioner.

*W.P. No.4351/2008 (Indore)

Umesh Gajankush, G.A., for the respondent Nos.1 & 2.
S.P. Joshi, for the respondent Nos.3 & 5.
B.A. Chitale, for the respondent No.6.

ORDER

VINEY MITTAL, J.(ORAL). :–This order shall dispose of 13 writ petitions being W.P.No.4351/2008, W.P.No.4349/2008, W.P.No.5038/2008, W.P.No.5146/2008, W.P.No.5147/2008, W.P.No.5218/2008, W.P.No.5219/2008, W.P.No.5252/2008, W.P.No.5253/2008, W.P.No.5254/2008, W.P.No.5295/2008, W.P.No.5338/2008 and W.P.No.5339/2008, as the controversy in all these cases is identical and identical prayer has been made. The main order is being passed in WP No. 4351 of 2006.

2. These petitions have been filed by some senior citizens raising a grievance against the rejection of their claim by Deputy Registrar and Liquidator of Maharashtra Brahman Sahkari Bank Limited-respondent no.3(hereinafter referred to as Official Liquidator). Additionally, a communication dated March 5, 2008 issued by Deposit Insurance and Credit Guarantee Corporation-respondent no.6 (hereinafter referred to as Guarantee Corporation) has been challenged, whereby the petitioners have been communicated that the money deposited by the petitioners with the respondent-Bank could not be permitted to be refunded and the petitioner-depositors may have to wait for their turn for the repayment of unpaid amount.

3. Before noticing the facts leading to the filing of these petitions and dilating thereupon, it would be apt to recall the advice of V.R.Krishna Iyer, J. in (1979) 2 SCC 274 *(Sant Ram Vs. Rajinder Lal),* popularly remembered as Cobbler's case.

> "Where doubts arise the Gandhian talisman becomes a tool of interpretation; whenever you are in doubt.....apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him."

Now the facts.

4. The petitioners in all the writ petitions have pleaded that they were the depositors with Maharashtra Brahman Sahkari Bank Ltd. (under liquidation) (hereinafter called respondent-Bank) and had deposited the money in their accounts, being the savings of their entire life. On account of some irregularities by the respondent-Bank, the Reserve Bank of India, vide its order dated September 22, 2004, cancelled the licence of the aforesaid bank w.e.f. October 6, 2004 and the bank was put under liquidation. After the cancellation of the licence of the respondent-bank, the Reserve Bank of India (RBI) and Official Liquidator as well as the Guarantee Corporation took charge of the affairs of the respondent-bank. It may be noticed that the Guarantee Corporation is a wholly owned subsidy of RBI and has been constituted to insure all deposits in commercial banks and subsidiaries.

5. The petitioners have claimed that the Official Liquidator, after taking over the management and control of the respondent-bank, started effecting recoveries, which were due and payable to the respondent-Bank by its debtors. Guarantee Corporation had also provided a huge sum for discharge of the liability of the respondent-Bank towards its depositors/creditors. On account the money made available by the Guarantee Corporation, the respondent-Bank, through Official Liquidator, disbursed an amount of Rs.1,00,000/- to each one of the depositors towards the repayment of the sums deposited by them in their respective accounts. However, the petitioners claim that although the Official Liquidator has made huge and substantial recoveries, but even thereafter, the remaining amount deposited by the petitioners in their accounts with the respondent-bank has not been released so far. On the other hand the Guarantee Corporation has prohibited the Official Liquidator and the respondent-Bank not to release any further amounts to the depositors, such as the petitioners, till the money advanced by the Guarantee Corporation was returned back.

6. A reply has been filed by respondent no.6- Guarantee Corporation. In the aforesaid reply, it has been maintained that the aforesaid Corporation was established with "twin objectives i.e. (i) giving insurance protection to small depositors in banks, and (ii) providing guarantee support to credit extended by banks and other approved financial institutions to certain categories of small borrowers, particularly those belonging to the weaker and neglected section of the society as well as to small-scale industrial units". The Guarantee Corporation has itself maintained that in order to achieve the aforesaid objectives of the Corporation, it had already advanced a huge sum to the Official Liquidator so as to meet with the obligations of the depositors and to release an amount of Rs.1,00,000/- to each one of the depositors. According to it, however, the remaining amount had to be released to the depositors by the Official Liquidator, after the outstanding dues payable to respondent-Bank were collected by the official liquidator and after the discharge of the other obligations, on pro rata basis. The Guarantee Corporation also maintains that at the first instance, the respondent-bank was required to return back the money of the Guarantee Corporation, which had been advanced by it, for the immediate release of the amounts to the depositors, and it is only thereafter, that the rest of the money could be released to the depositors.

7. Shri Praveeen Pandit, Assistant Manager of the respondent-Bank, who is present in Court, has informed the Court that the Official Liquidator, who is in control and management of the respondent-Bank w.e.f. Year 2004, is in fact successful in effecting huge recoveries to the extent of Rs.40-50 lacs per month. Shri Pandit has also informed the Court that, as of date, the liquidity amount of the aforesaid Bank is Rs.13 Crores, lying deposited in its accounts, with further continuous recoveries being effected.

8. Shri Pradeep Kumar, Assistant General Manager of Guarantee Corporation, who is also present in Court, has stated similar facts before the Court, as have been pleaded by the Guarantee Corporation in its reply. Shri Kumar has maintained that the Guarantee Corporation has to look after the interest of all the depositors of the Banks through out the Country and therefore, it was only by way of interim measure that a huge amount was already released to respondent-bank for immediate release of Rs.1,00,000/- to each one of the depositors, but the remaining amounts have to be paid by the Official Liquidator from the money collected from debtors of the aforesaid respondent-Bank. Shri Kumar has also maintained that Official Liquidator, after collecting the debts due to the respondent-bank, is required to first return the money advanced by the Guarantee Corporation and it is only thereafter that the said money can be applied for release of the amounts to the depositors of the Bank.

9. I have heard the learned counsel for the parties and have duly considered the facts and circumstances of the case.

10. As noticed above, the petitioners before this Court are all senior citizens (except two of them almost touching the age of 60 years). The petitioners had earlier approached this Court, through various writ petitions. The lead case being W.P.No.7489/2007. The aforesaid writ petitions were disposed of vide order dated December14, 2007. It was directed that the petitioners should first approach the Official Liquidator, who was directed to pass appropriate orders, in accordance with law. On the aforesaid liberty and directions issued by the Court, the petitioners filed detailed representations before the Official Liquidator. However, on account of a communication received by the Official Liquidator from the Guarantee Corporation/respondent no.6, not to release the money collected by the Official Liquidator through recoveries from the debtors of the respondent-Bank, the Official Liquidator expressed his inability to release the remaining amounts to the aforesaid depositor-petitioners.

11. It is in these circumstances, that the petitioners have approached this Court once again through the present petitions. Additionally a communication dated March 5, 2008 issued by the Guarantee Corporation to the depositors has also been challenged wherein it has been communicated that the "the creditors of the bank including depositors having balance in excess of Rs.One lakh may have to wait for their turn for repayment of their unpaid amount". As noticed above, the petitioners are not only small depositors, but are senior citizens. The Official Liquidator of the Bank has already collected huge amounts by way of recoveries. As of date, the amount lying with the Official Liquidator is to the extent of Rs.13 Crores approximately. As already noticed, Shri Pandit, Assistant Manager of the respondent-bank has informed the Court that Official Liquidator is engaged in a continuous process of recovery and is collecting approximately Rs.40-50 lacs per month.

12. It may also be relevant to note that the total remaining deposits of all the petitioners, in all these petitions, are only for an amount of approximately Rs.50 lacs. In these circumstances, keeping in view that all the petitioners are almost in the evening of their life, it would not be appropriate to expect them to wait indefinitely for repayment of the amount which they had deposited with the respondent-bank, in good faith. The petitioners, concededly, had not entered in any commercial transaction with the respondent-bank. They had not invested money in any speculative business or stock market. The money, so deposited by them was, in fact, savings of their entire life, kept with the Bank for later use by them, as and when so required, for their rainy days. It is apparent that the petitioners almost feel deprived on account of denial of their money back to them, merely on technical/commercial pleas. During the course of arguments, it has been brought out by the learned counsel for the petitioners that all the petitioners are in evening of their life and are visited by normal ailments of old age, and even find it difficult to meet the aforesaid exigencies, having been deprived of their entire savings.

13. The twin objectives of the Guarantee Corporation have already been noticed above. The petitioners are no millionaires- ever expecting to multiply money by making commercial or speculative investments. As a matter of fact they fall in strict parameters of the objectives, for which the Guarantee Corporation came into existence. To expect them to stand in queue with other depositors of the respondent-bank and wait for their turn would sound good on the touchstone of equality, but in fact would treat even the petty depositors, which the petitioners are, as some speculators in search for their millions. It is not so.

14. It would be appropriate to be guided by the observations of Krishna Iyer, J. once again. [(1978) 4 SCC 47- *Moti ram Vs. State of M.P.*].

> "The law, in its majestic quality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread, lampooned Anatole France. The reality of this caricature of equal justice under the law, whereby the poor are priced out of their liberty in the justice market is the grievance of the petitioners."
>
> Further.
>
> "If mason and millionaire were treated alike, egregious inegality is an inevitability."

If for nothing else, but for their background, their super-annuated status, their age and their financial placement, it would not be appropriate to make the petitioners wait for "their turn" as suggested by Guarantee Corporation.

15. In these circumstances, I feel that since liability towards the present petitioners is approximately Rs.50 lacs only, therefore the Official Liquidator should release the deposited amount of the depositor-petitioners at the first instance, and

the remaining recovered amount can be applied towards the remaining outstanding liabilities of the respondent-bank, including the return of the advanced amount to the Guarantee Corporation.

16. Consequently, the present petitions are allowed and the Official Liquidator-respondent no.3 and Bank-respondent no.5, are hereby directed to release the entire deposited amount of the petitioners, along with interest accrued upto the date the bank was put under liquidation, within a period of one month from the date a certified copy of this order is presented.

17. However, the amounts already refunded to the aforesaid depositors and any other outstanding liability of such depositors towards the respondent-Bank, would be deductable from the said deposited amount.

18. It would be perfectly apt to conclude with more advice from *Moti Ram* (Supra).

> "The common experience of life lends credence to this case and none but those who live in ivory towers can refuse to look at the raw realities of life."

19. The present petitions are disposed of accordingly.

C.C.as per rules.

Petition disposed of.

I.L.R. [2008] M. P., 3152
WRIT PETITION
Before Mr. Justice Viney Mittal
16 September, 2008*

MOHANLAL ... Petitioner
Vs.
KAJI VAKILUDDIN & ors. ... Respondents

Court Fees Act (7 of 1870) [As amended by M.P. Amendment Act of 2008 w.e.f. 02.04.2008], Schedule I, Article 1-A - ***Interpretation*** - *Court fees payable on plaint, counterclaim etc. when amount or value exceeds Rs.10 lacs - Trial courts have interpreted the clause to mean that the plaintiffs/ suitors were required to pay not only Rs.95,000 on such suit but a further amount to a maximum of Rs.1,50,000 over and above Rs.95,000 - Held - The subject matter in dispute exceeds Rs.10 lacs, the court fees payable thereupon by the plaintiffs/suitors would be Rs.95,000 + 3% on the amount or value in excess of Rs.10 lacs, but the total court fees payable by the plaintiffs/suitors would be subject to a maximum of Rs.1,50,000 - The maximum court fees required to be paid on all such suits would be Rs.1,50,000 only and no more.* (Para 10)

*W.P. No.4140/2008 (Indore)

न्यायालय फीस अधिनियम (1870 का 7) (म.प्र. संशोधन अधिनियम, 2008 द्वारा यथासंशोधित 02.04.2008 से यथाप्रभावी), अनुसूची I, अनुच्छेद 1–ए – निर्वचन – वादपत्र, प्रतिदावा आदि पर देय न्यायालय फीस जब रकम या मूल्य 10 लाख रुपये से अधिक हो – विचारण न्यायालय ने खण्ड का यह अर्थ निकालते हुए निर्वचन किया कि वादियों/वादकर्ताओं को ऐसे वाद पर न केवल 95,000 रुपये बल्कि 95,000 रुपये के ऊपर अधिकतम 1,50,000 रुपये अतिरिक्त रकम अदा करना अपेक्षित था – अभिनिर्धारित – विवाद की विषयवस्तु 10 लाख रुपये से अधिक होती है, तो उस पर वादियों/वादकर्ताओं द्वारा देय न्यायालय फीस 95,000 रुपये + 10 लाख से अधिक रकम या मूल्य पर 3 % होगी, किन्तु वादियों/वादकर्ताओं द्वारा देय कुल न्यायालय फीस अधिकतम 1,50,000 रुपये के अध्यधीन होगी – ऐसे सभी वादों पर देय अपेक्षित अधिकतम न्यायालय फीस केवल 1,50,000 रुपये होगी इससे अधिक नही।

A.K. Sethi with *Harish Joshi,* for the petitioner.

A.S. Garg with *Satish Jain & Amit Agrawal,* for the intervenors.

G.M. Chaphekar with *V.K. Jain,* for the intervenor (High Court Bar Association).

A.S. Kutumbale, Addl.A.G. with *Anand Pathak,* Dy.G.A., for the State.

ORDER

VINEY MITTAL, J.(ORAL). :–The controversy involved in the present petition, WP No. 4140 of 2008, and a bunch of other writ petitions, which have been clubbed along with the present petition, is with regard to the interpretation of Article 1-A of Schedule 1 of Court Fees (Madhya Pradesh Amendment) Act, 2008.

2. At the outset, it would be relevant to notice Article 1-A of Schedule 1 of the aforesaid Act as follows.

"1-A. Plaint, written statement pleading a set-off or counter claim, or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court except those mentioned in Section 3.	When the amount or value of the subject matter in dispute does not exceed five lacs rupees.	Twelve percent subject to a minimum of one hundred rupees.
to any Civil or Revenue Court except those mentioned in Section 3.	When such amount or value exceeds five lacs rupees but does not exceed ten lacs rupees.	Sixty thousand rupees plus seven percent on the amount or value in excess of five lacs rupees.

When such amount or value exceeds ten lacs rupees:	Ninety five thousand rupees plus three percent on the amount or value in excess of ten lacs rupees subject to a maximum of one lac and fifty thousand rupees.
Provided that minimum fee laviable on a memorandum of appeal shall be one hundred rupees."	

3. Whereas the writ petitioners, who are the plaintiffs in their respective suits pending before the trial Courts, maintain that irrespective of the valuations of the suits and the claim made in the said suit by a plaintiff, the maximum court fee payable by a plaintiff in a suit on which ad-valorem court fee is payable, is rupees one lac fifty thousand only. The respective trial Courts in various cases have observed that in case of a claim exceeding rupees ten lacs, the court fee was to be paid as rupees ninety five thousand plus 3% on the amount in excess over and above rupees ten lacs (subject to a maximum of rupees one lac fifty thousand). In essence, the trial Courts have interpreted the aforesaid clause to mean that the plaintiffs were required to pay not only rupees ninety five thousand on such suits, but a further amount subject to a maximum of rupees one lac fifty thousand over and above rupees ninety five thousand.

4. The aforesaid interpretation has been disputed by the plaintiffs in these petitions. The High Court Bar Association has also intervened. It has been claimed that on account of a wrong interpretation taken by various trial Courts in the State, the litigants are suffering and being put to unnecessary burden. Various senior counsel have also addressed the Court pro bono publico.

5. Since the payment of court-fee is essentially a matter between the plaintiff, the Court and the State Government, and notices in the suits had yet to be issued to the defendants, and also keeping in view the importance of the matter, it was

thought appropriate to require the Additional Advocate General of the State to address the court and present the viewpoint of the State on the interpretation of the amended provisions of the Act.

6. On the last date of hearing, i.e. August 26, 2008, Shri A.S. Kutumbale, learned Additional Advocate General had sought time to seek instructions and study the matter further. Consequently, the matter was adjourned to September 16, 2008 i.e. for today.

7. Today, at the very commencement of arguments, Shri Kutumbale, on instructions from the Law Department of the State Government, has stated before the Court that the interpretation, adopted by the various trial Courts in the State, appears to be incorrect, in as much as, as per the true intention of Legislature, in formulating the aforesaid clause with regard to the maximum court fee payable on a suit exceeding evaluation of rupees ten lacs, the maximum total court fee could not have exceeded rupees one lac fifty thousand. Shri Kutumbale, further states that the aforesaid intention of the Legislature is also inferable from the provisions, which also provide for a minimum amount of court fee payable on a suit and shows that the legislature had intended to provide minimum and maximum limits of court fee payable by a suitor.

8. In view of the statement made by the learned Additional Advocate General, although the controversy appears to be settled and it is not necessary to discuss the matter any further, but I have also perused the aforesaid provisions of Article 1-A.

9. The language of Article 1-A clearly shows that on a plaint or a counter claim/set off along with the written statement or memorandum of appeal, which requires the payment of ad-valorem court fee, when the amount or value of the subject matter in dispute does not exceed rupees five lacs, a suitor is required to pay a court fee of twelve percent on the valuation of the suit. However, even in matters involving petty claims, a minimum of court fee of rupees one hundred has been provided. Similarly, when the claim exceeds rupees five lacs, but does not exceed rupees ten lacs, the court fee has to be paid as rupees sixty five thousand plus seven percent on the amount or value in excess of rupees five lacs. In the case of a suitor, where the claim/value exceeds rupees ten lacs, a suitor is required to pay court fee of rupees ninety five thousand plus three percent on the amount in excess of rupees ten lacs. In the last situation however, there is a rider. The maximum amount of court fee payable by such a suitor, has been indicated as rupees one lac fifty thousand. In fact, it would be wholly unnecessary to reiterate that the provisions of Court Fees Act are not for the imposition of a tax payable by a plaintiff/claimant, but the court fee is required to be paid by a plaintiff/claimant, merely with a view to meet some of the expenses incurred by the State in providing a system for adjudication. A right to seek judicial review and approach, the Courts is one of the basic features of the Constitution of India. In a welfare State, an

inexpensive system for administration of justice is not only an obligation of the State, but is also a fundamental right of a citizen, under the Constitution of India. Thus, the court fee chargeable from a person approaching the Court, has to be kept in such reasonable limits, by the State, as may be deemed appropriate. It is with the aforesaid goal and objective in view that the provisions of the Court Fees Act, more-so Article 1-A of Schedule 1, have been framed. Thus, when the aforesaid provisions provide for a minimum court fee of rupees hundred to be paid by a plaintiff/suitor, then it is apparent that a maximum ceiling of rupees one lac fifty thousand has also been fixed. In my considered view, the stand taken on behalf of the State Government is just and appropriate and reflects the true intention of the Legislature and therefore, needs to be accepted by the Court.

10. Consequently, it is directed that in a suit when the amount or value of the subject matter in dispute exceeds rupees ten lacs, the court fee payable thereupon by the plaintiff would be rupees ninety five thousand plus three percent on the amount or value in excess of rupees ten lacs, but the total court fee payable by the plaintiff would be subject to a maximum of rupees one lac fifty thousand. For the sake of clarification, it is specified that the maximum court fee required to be paid by a plaintiff on all such suits would be rupees one lac fifty thousand only and no more.

11. In view the aforesaid discussion, the impugned order Annexure P-3 passed in WP No. 4140 of 2008 is hereby set- aside. The trial Court shall determine the court fee payable by the plaintiff keeping in view the aforesaid directions.

12. Since the aforesaid controversy is arising everyday before the subordinate Courts, therefore, it would be appropriate to direct the Registrar of the High Court Bench at Indore, to forward a copy of this order to the various District Judges in territorial jurisdiction of this Bench, for further circulation of the order to all the Courts subordinate to the said District Judges. A copy of this order be also forwarded by the Registrar to the Registrar General at the Principal Bench, for further necessary circulation, after getting appropriate orders from Hon'ble the Chief Justice.

13. Needless to say that since the question involved in the controversy was with regard to the correct interpretation of the provisos in question, therefore, this order passed by the Court interpreting the provisions of Article 1-A of Schedule 1 of the Court Fees (Madhya Pradesh Amendment) Act, 2008 would become operative w.e.f. April 2, 2008 i.e. the date on which the Amendment Act came into force.

C.c. as per rules.

Order accordingly.

I.L.R. [2008] M. P., 3157

WRIT PETITION

Before Mr. Justice S.C. Sharma

17 September, 2008*

YASHWANT SINGH SIKARWAR ... Petitioner

Vs.

TERESIAN CARMEL EDUCATIONAL SOCIETY & ors. ... Respondents

Constitution, Article 226, Service Law - ***Non Grant Aided Private Educational Institutions - Writ Petition - Maintainability*** - *A writ petition under Article 226 of Constitution against a private educational institution not receiving grant-in-aid either from State Government or from Central Government - Petitioner claiming continuance in service beyond 58 years of age - No question of public law involved in as much as the grievance is of personal nature - Writ petition not maintainable.* (Paras 8 & 9)

संविधान, अनुच्छेद 226, सेवा विधि – **गैर अनुदान प्राप्त निजी शैक्षणिक संस्थान – रिट याचिका – पोषणीयता** – संविधान के अनुच्छेद 226 के अन्तर्गत रिट याचिका निजी शैक्षणिक संस्थान के विरुद्ध, जो न तो राज्य सरकार से और न केन्द्र सरकार से सहायता अनुदान प्राप्त करती थी.– याची 58 वर्ष की उम्र के बाद सेवा में रखने का दावा करता है – लोक विधि का कोई प्रश्न अन्तर्ग्रस्त नही है यहाँ तक कि शिकायत वैयक्तिक प्रकृति की है – रिट याचिका पोषणीय नही।

U.P.S. Chouhan, for the petitioner.

K.N. Gupta with *S.N. Gajendragadkar,* for the respondents.

ORDER

S.C. SHARMA, J. :–Regard being had to the similitude of the controversy involved in both the writ petitions, they were heard analogously together and disposed of by this singular order. For the sake of convenience, the facts stated in Writ Petition 590 of 2001 are exposited herein.

2. The petitioner-before this Court who was a teacher working at Carmel Convent School has filed this present petition challenging the order of Management deted 01st January, 2001, by which, he was informed that he shall be retired on completing 58 years of age on 01st February, 2001. The contention of the petitioner is that respondent no 1 society, is a registered society under the provisions of Societies Registrikaran Adhiniyam, 1973 and is running a school in the name and style Carmel Convent Senior Secondary School, Gwalior. It has been further contended that the school in question is affiliated to the Central Board of Secondary Education, New Delhi and the society as well as the school as per terms and conditions of affiliation are liable to follow the regulations framed by the Central Board of Secondary Education. It has been further stated by the petitioner that

*W.P. No.590/2001 (Gwalior)

the byelaws of the Central Board of Secondary Education provides that a school which is affiliated with the Central Board of Secondary Education shall also frame rules in consonance with the Service Rules which are applicable in respect of employees of aided and unaided schools of the State Government /Union territories. It has been further contended by the petitioner that in the State of Madhya Pradesh retirement age of a teacher in the school of the State Government is 62 years and, therefore, as per byelaws of the Central Board of Secondary Education, he is entitled for continuance upto the age of 62 years. The petitioner has, thus, prayed for quashing of the notice dated 01st January, 2001 and also the subsequent order dated 31.01.2001, by which, he has been superannuated from services on completion of 58 years of age on 01.02.2001 and also prayed for pay and allowances along with reinstatement in service.

3. The respondent no. 1 to 4 have filed a reply and it has been stated that Carmel Convent School is a private school which is being run by respondent no. 1 - society and which is not receiving any financial aid from the Central Government or from the State Government. It has been further stated that the institution does not fall within the meaning of "State" as defined under Article 12 of the Constitution of India and, therefore, is not amenable to writ jurisdiction by this Court. Not only this, the respondents have relied upon a judgment delivered by this Court in the case of *Lal Singh vs. The Chairman School Administration Board, B.S.F. Tekanpur. Gwalior* (M.P. No. 996/1991), wherein, in similar circumstances, where a school was being run by a society not receiving grant-in-aid was impleaded as one of the respondent and it has been held by this Court that such an institution is a private body and therefore no writ lies against a private body.

4. The petitioner has subsequently filed a rejoinder and it has been stated, in the rejoinder that the institution in question as it is discharging the public duties is certainly amenable to writ jurisdiction of this Court. The petitioner has relied upon a judgment delivered by this Court in the case of *Narendra Pal Singh vs. M.P. Dugdh Mahasangh, Bhopal* reported in 1993 (2) M.P.J.R. Page 20. It has been further contended that the Carmel Convent School is affiliated with the Central Board of Secondary Education and as per byelaw 30, petitioner is entitled for continuance upto the same age at par with the employees of aided / unaided schools of the State of Madhya Pradesh. The petitioner has also relied upon a judgment delivered by this Court in W.P. No. 1273 of 1997 *(Smt. Nirmalal Gangajaliwale vs. Management of Carmel Convent School, Gwalior)* decided on 27th July, 2001, wherein the similar institution was held to be amenable writ jurisdiction by this Court.

5. Heard learned counsel for the parties at length and perused the record.

6. In the present case the dispute is regarding continuance of the petitioner who is an employee of the Carmel Convent School, a school which is being run by

a society registered under the Societies Registrikaran Adhiniyam 1973. It is not in dispute that the institution is not receiving grant-in-aid either from the State Government or from the Central Government. The institute is certainly affiliated with the Central Board of Secondary Education, New Delhi. The learned counsel for the petitioner has filed a judgment delivered by this Court in W.P. No. 1273 of 1997 decided on 27th July, 2001. By the aforesaid order passed by this Court, another writ petition i.e. W.P. No. 792 of 1999 (*Miss Malini Karkhedkar vs. Teresian Carmel Educational Society and others*) has also been decided. A Writ Appeal was preferred against the judgment dated 27th July, 2001 passed in W.P. No. 1273 of 1997 and a Division Bench of this Court placing reliance to the judgment delivered by the apex Court in the case of *K. Krishnamacharyulu & others vs. Sri Venkateswara Hindu College of Engineering & another* reported in 1997 (3) SCC 571 has held that a writ can be issued against an unaided educational institution which is indulged in imparting education as it is discharging the public duties. It has been further held that writ against such institution is maintainable before this Court. Paragraph 16 of the aforesaid order passed by this Court in Writ Appeal No. 166 of 2006 read as under:-

> 16. The Apex Court in the case of *K.Krishnamacharyulu vs. Sri Venkateshwara Hindu College of Engineering and another* (1997) 3 SCC 571 has laid down that writ can be issued against an unaided educational institution which is indulged in imparting education as it is discharging the public duties. In the present appeals, the appellant is imparting education. Thus, the element of public duty is present and therefore in view of the aforesaid judgment of the apex Court, is amenable to writ jurisdiction and writ petition lies against the present appellants."

7. The respondent / society being aggrieved by the order passed by the Division Bench of this Court in the Writ Appeal has preferred a Special Leave Petition before the apex Court and the Hon'ble Supreme Court keeping in view the fact that the employee therein has already attained age of 60 years and also keeping in view the fact that the Division Bench has not granted back wages to the employee therein, has declined to interfere with the order passed by the Division Bench of this Court in the Writ Appeal. However, the question of law was left open. The following order dated 29.08.08 was passed in S.L.P.(civil) No. 20417-20418/2008.

> "As the employee has already reached the age of 60 years and the Division Bench has stated that she will not be entitled to any backwages, we do not consider this a fit case for interference under Article 136 of the Constitution. We, therefore, dismissed the petitions leaving open the question of law."

Learned counsel for the respondent / society .has also brought to the notice of this Court an order passed in Civil Appeal No. 8783/8784 of 2003, dated July

19, 2007 (*S.K. Varshney vs. Principal, Our Lady of Fatima H.S.S. & Ors.*), in which again dispute was regarding retirement age of a teacher working in an unaided institution. The apex Court while dismissing the appeal preferred by the employee has held as under:-

> "Both the petitions were dismissed by the learned single Judge on the ground that no writ would lie against unaided private institutions and the writ petitions were not maintainable.
>
> Aggrieved thereby, writ appeals have been filed before the Division Bench without any result. The Division Bench held that the writ petitions are not maintainable against a private institute. Aggrieved thereby, these appeals have been filed.
>
> Counsel for the appellant relied on a decision rendered by this Court in *K. Krishnamacharyulu & Ors. Vs. Sri Venkateswara Hindu College of Engineering & Anr.* (1997) 3 SCC 571. He particularly relied on the observation made by this Court in paragraph 4 of the order that when an element of public interest is created and the institution is catering to that element, the teacher, being the arm of the institution, is also entitled to avail of the remedy provided under Article 226.
>
> This Court in *Sushmita Basu & Ors. vs. Ballygunge Siksha Samity & Ors.* (2006) 7 SCC 680 in which one of us (Sema, J.) is a party, after considering the aforesaid judgment has distinguished the ratio by holding that the writ under Article 226 of the Constitution against a private educational institute would be justified only if a public law element is involved and if it is only a private law remedy no writ petition would lie. In the present cases, there is no question of public law element involved inasmuch as the grievance of the appellants are of personal nature. We, accordingly, hold that writ petitions are not maintainable against the private institute. There is no infirmity in the order passed by the learned single Judge and affirmed by the Division Bench. These appeals are devoid of merit and are, accordingly, dismissed. No costs."

8. The order passed by the apex Court makes it very clear that in case of retirement and in case of termination, no public law element is involved. The apex Court has held that a writ under Article 226 of the Constitution of the India against a private educational institution shall be maintainable only if a public law element is involved and if there is no public law element is involved, no writ lies. In the present writ petition, the petitioner is claiming continuance in service beyond 58 years of age and, therefore, there is no question of public law element involved inasmuch as the grievance of the petitioner is of personal nature.

9. Keeping in view the judgments delivered by the apex Court in the aforesaid cases, the present writ petition is not at all maintainable against the respondent /

society as the respondent no. 1 / society i.e. Carmel Convent School is a private institution not receiving grant-in-aid either from the State Government or from the Central Government. Resultantly, as the petitions are not maintainable before this Court, the same are hereby dismissed. No order as to costs.

Petition dismissed.

I.L.R. [2008] M. P., 3161

WRIT PETITION

Before Mr. Justice S.K. Gangele

23 September, 2008*

ASHOK KUMAR GOYAL ... Petitioner

Vs.

INCOME TAX SETTLEMENT COMMISSION & ors. ... Respondents

Income Tax Act (43 of 1961), Sections 132, 245, 245(1), 245-C(1), 245-D(3), 245-D(4) - *Power of Income Tax Settlement Commission u/s 245 of the Act - I.T. Department carried out a search operation and seized some documents and assets - Petitioner filed application for settlement u/s 245-C(1) of the Act before Settlement Commission and admitted fact of undisclosed income - Department issued number of letters for submission of detailed information - Petitioner did not submit any reply - The Commission directed that an enquiry be conducted by the Department - Order challenged on the ground that direction for an enquiry is against the provisions of Section 245 - It is obligatory on the part of Commission to accept the income disclosed by the petitioner and there is no provision under the Act to direct the department for enquiry or verification - Held - The petitioner did not submit any reply to the Department - In such circumstances it would not be possible for the Commission to determine that whether the petitioner has made full & true disclosure of his income - It is the important point which has to be decided by the Commission because the benefit of section can only be given by the Commission after recording a finding that the assessee has made full and true disclosure of his income - Petition dismissed.* (Paras 13 to 19)

आयकर अधिनियम (1961 का 43), धाराएँ 132, 245, 245(1), 245–सी(1), 245–डी(3), 245–डी(4) – अधिनियम की धारा 245 के अन्तर्गत आयकर सेटलमेंट कमीशन की शक्ति – आयकर विभाग ने तलाशी अभियान चलाया और कुछ दस्तावेज और आस्तियाँ अभिग्रहीत कीं – याची ने अधिनियम की धारा 245–सी(1) के अन्तर्गत सेटलमेंट कमीशन के समक्ष समझौते के लिए आवेदन पेश किया और अप्रकटित आय के तथ्य को स्वीकार किया – विभाग ने विस्तृत जानकारी पेश करने के लिए कई पत्र जारी किये – याची ने कोई जवाब पेश नहीं किया – कमीशन ने निदेश दिया कि विभाग द्वारा जाँच की जाए – आदेश को इस आधार पर चुनौती दी गई कि जाँच के लिए निदेश धारा 245 के उपबंधों के विपरीत है – कमीशन के लिए यह आज्ञापक

*W.P. No.3358/2008 (Gwalior)

है कि याची द्वारा प्रकटित आय को स्वीकार कर ले और अधिनियम के अन्तर्गत ऐसा कोई उपबंध नही है कि विभाग को जाँच या सत्यापन के लिए निदेश दिया जाए – अभिनिर्धारित – याची ने विभाग को कोई जवाब प्रस्तुत नही किया – ऐसी परिस्थितियों में कमीशन के लिए यह अवधारित करना संभव नही होगा कि याची ने उसकी आय का पूर्ण और सही प्रकटीकरण किया है – यह महत्वपूर्ण बिन्दु है जो कमीशन द्वारा विनिश्चित किया जाना है क्योंकि धारा का लाभ केवल कमीशन द्वारा, यह निष्कर्ष अभिलिखित करने के बाद कि निर्धारिती ने उसकी पूरी और सही आय प्रकट की है, दिया जा सकता है – याचिका खारिज।

H.D. Gupta with *Ajay Bohara & Santosh Agarwal,* for the petitioner.
R.D. Jain with *S.N. Seth,* for the respondents.

ORDER

S.K. GANGELE, J. :–This order shall govern disposal of (1) W.P. No. 3358/08, Ashok Kumar Goyal v. Income Tax Settlement Commission and others; (2) W.P. No. 3356/08, Harishankar Goyal v. Income Tax Settlement Commission and others; (3) W.P. No. 3361/08, Yash Kumar Goyal v. Income Tax Settlement Commission and others; (4) W.P. No. 3364/08 Tarun Kumar v. Income Tax Settlement Commission and others; (5) W.P. No. 3360/08 Smt. Pretti Goyal v. Income Tax Settlement Commission and others; (6) W. P. No. 3363/08 Smt. Renu Goyal v. Income Tax Settlement Commission and others; (7) W.P. No. 3357/08 Smt. Nirupam Kaur v. Income Tax Settlement Commission and others; and (8) W.P. No. 3359/08 Gulzar Singh v. Income Tax Settlement Commission and others.

2. For the purpose of decision in all these writ petitions the facts stated in Writ Petition No. 2258/08, Ashok Kumar Goyal v. Income Tax Settlement Commission and others, have been taken into consideration.

3. Heard on the question of admission and grant of interim relief.

4. All the writ petitions have been filed against certain directions issued vide order dated 31.03.2008 by respondent No.1, Income Tax Settlement Commission under section 245-D (4) of the Income Tax Act.

5. Income Tax department carried out a search under section 132 of the Income Tax Act on 04.08.2006 at the residence of the petitioner (s). It was concluded on 06.08.2006. The department seized several documents and papers and also seized assets mentioned in para 2 of the impugned order. From the petitioner the department seized cash of Rs.16,36,500/-. On the basis of the aforesaid search and seizure of the assets and documents seized by the department the department reached on primary finding that the petitioner (s) had not paid income tax correctly from the assessment year 2001-2002 upto 2006-2007. Thereafter, the petitioner and other petitioners in connected petitions filed applications for settlement under section 245-C (1) of the Income Tax Act 1961 before the Income Tax Settlement Commission, Mumbai. In the aforesaid applications all the petitioners voluntarily disclosed certain additional income. The petitioner, Ashok Kumar Goyal, offered additional income for the purpose of tax Rs.1,50,06,254/-. All the petitioners have

been offered following additional income for the purpose of settlement under section 245-C (1) of the Income Tax 1961 :-

(a)	Mr. Harishankar Goyal	27,13,653/-
(b)	Mr. Ashok Kumar Goyal	1,50,06,254/-
(c)	Mr. Gulzar Singh	1,89,36,254/-
(d)	Smt. Renu Goyal	4,10,000/-
(e)	Mr. Tarun Goyal	9,85,000/-
(f)	Smt. Nirupam	5,85,205/-
(g)	Smt. Preeti Goyal	7,51,000/-
(h)	Mr. Yash Goyal	1,27,02,908/-

6. The petitioner mentioned in the statement of facts of the application filed before the Settlement Commission that he had additional unaccounted income from his partner Mr. Gulzar Singh from out of joint-venture in the name and style of M/s Progressive Enterprises through liquor business. As per the petitioner he received 50 % of his share from the aforesaid business. Earlier, the petitioner filed a writ petition before the High Court, which was disposed of vide order dated 26.07.2007 with the observation that the petitioner may approach the Settlement Commission.

7. The Commission directed the Assessing Officer, Income Tax, Circle 2, Gwalior and Additional Director of Investigation, Settlement Commission, Mumbai to submit a detailed report before the Commission. The Income Tax Commissioner, Gwalior also submitted a detailed statement in reply to the application filed by the petitioner. The Income Tax Commissioner has specifically submitted that huge amount of income has been concealed by the Goyal Group and Gulzar Singh Group of cases and to ascertain the same deep and detailed enquiry and verification of books of accounts relating to seized material and documents are required in the above mentioned cases. The Assistant Commissioner, Income tax and Deputy Commissioner of Income Tax, Gwalior also issued various letters to the petitioners and requested them to furnish their explanation in regard to the evidence gathered during the search. Some of the letters have been filed by the petitioner along with the petitions. One of the letter is dated 16.05.2008 issued to Mr. Ashok Goyal, the petitioner. In the aforesaid letter Deputy Commissioner of Income Tax, Circle 2, Gwalior asked various explanations. Subsequently, on 06.06.2008 another letter had been issued to the petitioner. The petitioner did not submit any reply to the aforesaid letters. On 17.07.2008 also a letter was issued to the petitioner.

8. Because the matter could not be finalized by the Commission within time then the petitioner filed a writ petition before this Court, which was registered as Writ Petition No. 986/08, for certain directions. The aforesaid writ petition has been disposed of vide order dated 04.03.2008 with the following directions :-

"13. Considering the nature of relief claimed by the petitioner, I am in full agreement with the view taken by the Division Bench of the Delhi High Court and the Madras High Court in the cases referred to hereinabove, and resultantly, a direction is issued to the Settlement Commission, the respondent No.2 herein to dispose of the settlement application filed by the petitioner on 28th May, 2007 on or before 31st March,2008, so that the proceedings do not abate in terms of section 245HA (1) of the Act.

14. With the above direction, all the writ petitions stand allowed and disposed of. The Settlement Commission is directed to dispose of the settlement applications filed by the petitioners on or before 31st March, 2008 in accordance with law. No order as to cost."

9. Thereafter, the Settlement Commission passed the impugned order. The Commission has observed that as per the directions of the High Court the applications had to be disposed of in accordance with law on or before 31st March, 2008 and the Commission was not in a position to order enquiry as per the provisions of section 245-D (3) of the Income Tax Act and the Commission further observed that it has no option but to accept the additional income as disclosed before it by the applicants. The Commission further directed that a proper enquiry be conducted by the department within a period of six months from the date of receipt of the order and it shall submit a report to the Commission for appreciation that whether full and true disclosures have been made by the applicants. The petitioners are aggrieved by the aforesaid direction.

10. Learned counsel for the petitioner has submitted that the additional direction issued by the Commission for enquiry is against the provisions of section 245 of the Income Tax Act. The petitioners have voluntarily disclosed their income and they have again been sent to the department for enquiry, which is illegal. It is obligatory on the part of the Commission to accept the income disclosed by the petitioners and there is no provision under the Act to direct the department for enquiry or verification. Contrary to this, learned Senior Counsel appearing on behalf of the respondent - department, has submitted that the petitioner himself has not cooperated with the department. He had given number of opportunities and letters by the department to explain undisclosed income and about the documents which had been seized by the department in a search operation. As per the reply filed by the department before the Commission all the petitioners including the present petitioner have concealed an income of Rs. 120 crore and any how the petitioners want to evade the enquiry in order to escape themselves from the payment of liability of the tax.

11. Chapter XIX of the Income Tax Act, 1961 prescribes provision with regard to settlement of cases. Section 245C (1) prescribes provision for making application for settlement of cases, which is as under :-

"(1) An assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the "(Assessing) Officer, the manner in which such income has been derived, the additional amount of income-tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided :

[Provided that no such application shall be made unless :-

(i) the additional amount of income-tax payable on the income disclosed in the application exceeds three lakh rupees; and

(ii) such tax and the interest thereon, which would have been paid under the provisions of this Act had the income disclosed in the application been declared in the return of income before the Assessing Officer on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application]

(1A) For the purposes of sub-section (1) of this section [***}, the additional amount of income-tax payable in respect of the income disclosed in an application made under sub-section (1) of this section shall be the amount calculated in accordance with the provisions of sub-sections (1B) to (1D).

[(1B) Where the income disclosed in the application relates to only one previous year, --

(i) if the applicant has not furnished a return in respect of the total income of that year, then, tax shall be calculated on the income disclosed in the application as if such income were the total income;

(ii) if the applicant has furnished a return in respect of the total income of that year, tax shall be calculated on the aggregate of the total income returned and the income disclosed in the application as if such aggregate were the total income.]

[(1C) The additional amount of income-tax payable in respect of the income disclosed in the application relating to the previous year referred to in such-section (1B) shall be, --

(a) in a case referred to in clause (i) of that sub-section, the amount of tax calculated under that clause;

(b) in a case referred to in clause (ii) of that sub-section, the amount of tax calculated under that clause as reduced by the amount of tax calculated on the total income returned for that year;

(c)[***}

(1D) Where the income disclosed in the application relates to more than one previous year, the additional amount of income-tax payable in respect of the income disclosed for each of the years shall first be calculated in accordance with the provisions of sub-sections (1B) and (1C) and the aggregate of the amount so arrived at in respect of each of the years for which the application has been made under sub-section (1) shall be the additional amount of income-tax payable in respect of the income disclosed in the application.

(1E) [***]

(2) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

[(4) An assessee shall, on the date on which he makes an application under sub-section (1) to the Settlement Commission, also intimate the Assessing Officer in the prescribed manner of having made such application to the said Commission.]"

12. It is clear from the aforesaid section that it is obligatory on the part of the assessee to make a full and true disclosure of his income.

13. The Settlement Commission was constituted as a result of a Report given by a Committee headed by Hon'ble Mr. Justice K.N. Wanchoo, a former Chief Justice of India. The Wanchoo Committee recommended a settlement machinery since, in the administration of fiscal laws, the primary objective is to raise revenue and so there has to be room for compromise and settlement. A rigid attitude would not only inhibit a one-time tax-evader or an unintending defaulter from making a clean breast of his affairs, but would also unnecessarily strain the investigational resources of the Department in cases of doubtful benefit to revenue, while needlessly proliferating litigation and holding up collections.

14. The Wanchoo Committee recommended the setting up of a Direct Taxes Settlement Tribunal which would ensure impartial and quick decisions. That Tribunal would proceed with a settlement petition only if the Income Tax Department raised no objection to its being entertained otherwise that Tribunal might become an escape route for the tax evaders. In other words, the Wanchoo Committee gave adequate protection both to the tax payer in terms of ensuring an impartial and quick decision or settlement in his case and also to the Income Tax Department by enabling it to oppose a settlement application in case the tax evader sought to use the process of the Settlement Tribunal as an escape route for evading tax. Acting on these recommendations, the Act was amended with effect from 1st April, 1975 by introducing Chapter XIX-A for settlement of cases through a Settlement Commission.

15. It is clear from the provisions in the Income Tax Act that Settlement Commission has exclusive jurisdiction to exercise powers and perform the functions of an Income Tax Authority under the provisions of income Tax Act in relation to the cases before it. When a tax payer or a tax-evader, as the case may be, files a settlement application before the Commission he cannot withdraw the application and section 245 (1) of the Income Tax Act makes every order passed by the Settlement Commission conclusive as to the matters stated therein and the matter covered by the final order passed by the Settlement Commission shall not be re-opened in any proceedings under the Act or no any other law for the time being in force. Hence, the Settlement Commission has enormous powers. The purpose of recommending or establishment of Settlement Commission is to ensure impartial and quick decisions to give protection to a person who has disclosed his income truly.

16. The same fact has been mentioned in Section 245 (C) of the Income Tax Act, in which it has been mentioned that "a full and true disclosure of his income". The aforesaid safeguard has been taken by the Legislature to see that tax evaders cannot get an undue benefit under the provisions of section 245 and the department can also submit before the Commission that assessee has not made true and total disclosure of his income before the Commission.

17. In the present case, there was a search at the premises of the petitioner and in the aforesaid search operations the department found number of documents and thereafter petitioner himself submitted application before the Commission and admitted the fact of undisclosed income. The department has issued number of letters to the petitioner as mentioned earlier in the order with regard to submission of detailed information to the Authority, so the Authority can verify that whether the petitioner has made full and true disclosure of undisclosed income. However, the petitioner did not submit any information or reply to the department. From the conduct of the petitioner this Court has gathered an impression that the petitioner deliberately avoided to submit reply or information to the department and purpose of this was to evade the enquiry.

18. The Commission in the impugned order has specifically made certain observations about the petitioner, which are as under :-

> "8.4. While the additional income offered in the SOF of these cases altogether amount to Rs.5,20,90,274/-, as per the Rule 9 report of the CIT, the possible undisclosed income of the applicants of this group could be of the order of Rs.120 crores approximately. It is not the size which is daunting but the extent of unverified issues, which are many as have been brought out in the Rule 9 report of the CIT. Although the learned AR has submitted that the applicants have given due regard to all aspects while making the disclosure, in view of the specific substantial issues raised, we would ordinarily be obliged under law to have the verifications made.

8.5 On several occasions the Hon'ble Apex Court have underscored the importance of garnering resources of the country. As a machinery in the process of settlement of disputes for the purposes of collection of taxes, it is our obligation to ensure that all aspects of a case are properly looked into. But, due to constraint of time, we are unable to do so.

8.6 Although the learned AR has forcefully submitted that the CIT had adequate time at his disposal to conduct enquiries, we would not agree with his view. We would rather agree with the CIT that the applicants have blocked the process of enquiry whenever such enquiry has been undertaken. Mere perusal of the statement of YKG us. 132(4) would show that inspite of certain documents being recovered from his possession, he has bluntly refused to acknowledge such recovery itself, what to talk of explaining the contents thereof. It is noteworthy that certain disclosures are based on those very materials which were then being disowned by YKG.

8.7 Another instance was that the Assessing Officer had issued questionnaires. Instead, they filed the settlement applications.

8.8 So we find that there never was adequate time to conduct enquiries. The applicants had not cooperated with the enquiries and now we have before us matters which do require careful and elaborate enquiry. But we do not have time at our disposal to have all issues involved in these cases to be appropriately verified and enquired into. Under the circumstances we have no option but to accept the additional incomes as disclosed before us by these applicants.

8.9 Time and again during the course of his submissions, the learned AR has very fairly submitted that the disclosure made by the applicants can be subjected to verification and enquiry and if found false or understated, the provisions as per section 245D(6) and section 245H(2) may be invoked against the applicant concerned. In view of the substantial issues involved which require enquiry, we would accept the submissions of the learned AR which are also echoed by the CIT (DR) as well, inasmuch as he demands that proper enquiry be done."

19. From the facts of the case, it is clear that the observations made by the Commission in the impugned order are based on facts. The petitioner did not submit any reply to the Income Tax Authority. In such circumstances, it would not be possible for the Commission to determine that whether the petitioner has made full and true disclosure of his income which has been disclosed under section 245C of the Income Tax Act. In my opinion, this is the important point which has to be decided by the Commission because the benefit of section can only be given by the Commission after recording a finding that the assessee has

made full and true disclosure of his income. Hence, the Commission has not committed any error of law in directing the CIT to conduct a comprehensive enquiry into all the issues involved in the case. The Commission has also observed in the order that the possible undisclosed income of the petitioner of this group as per the report submitted by the CIT under Rule 9 before the Commission could be around Rs.120 crores and all the petitioners have disclosed total undisclosed income of Rs. 5,20,90,274/-. Hence, there is no illegality or irregularity in the order passed by the Commission.

20. Consequently, I do not find any merit in this petition. It is hereby dismissed at motion stage. No order as to cost.

Petition dismissed.

I.L.R. [2008] M. P., 3169
APPELLATE CIVIL
Before Mr. Justice N.K. Mody
21 January, 2008*

BHARAT PETROLEUM CORPORATION LTD. ... Appellant
Vs.
UMESHKUMAR & anr. ... Respondents

Land Acquisition Act (1 of 1894), Sections 26(2) & 54, Limitation Act, 1963 (As amended w.e.f. 01.07.2002), Section 12(3) - *Appeal against award - Application for condonation of delay - Time spent for preparation of decree sought to be condoned - Held - After receiving the copy of award for about five months, no action was taken by the appellant for moving an application for preparation of decree - In view of Section 26(2) of the Land Acquisition Act and Section 12(3) of Limitation Act copy of decree along with appeal was not required to be filed - It could not be said that there is no delay in filing appeal - However, since impugned award is also under challenge in the appeal filed for enhancement by respondent No.1, where appellant can file cross-objection - Delay condoned with cost - Application disposed of.* (Para 7)

भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 26(2) व 54, परिसीमा अधिनियम, 1963 (01.07.2002 से यथासंशोधित), धारा 12(3) – अधिनिर्णय के विरुद्ध अपील – विलम्ब माफी के लिए आवेदन – डिक्री तैयार होने में लगे समय की माफी चाही – अभिनिर्धारित – अधिनिर्णय की प्रतिलिपि प्राप्त होने के बाद लगभग पाँच माह तक अपीलार्थी द्वारा डिक्री तैयार करने के लिए आवेदन पेश करने के सम्बन्ध में कोई कार्यवाही नही की – भूमि अर्जन अधिनियम की धारा 26(2) और परिसीमा अधिनियम की धारा 12(3) के अनुसार अपील के साथ डिक्री की प्रतिलिपि पेश करना आवश्यक नही था – यह नही कहा जा सकता कि अपील पेश करने में कोई विलम्ब नही है – तथापि, चूंकि वृद्धि के लिए प्रत्यर्थी क्रमांक 1 द्वारा पेश अपील में भी आक्षेपित अधिनिर्णय को चुनौती

*F.A. No.312/2005 (Indore)

दी गई है, जहाँ अपीलार्थी प्रत्याक्षेप पेश कर सकता है – विलम्ब खर्चे सहित माफ किया गया – आवेदन निपटाया गया।

Case referred :

AIR 1995 SC 2812.

Dilip Kshirsagar, for the appellant.
V.K. Jain, for the respondent No.1.
S.D. Bohra, G.A., for the respondent No.2.

ORDER

N.K. Mody, J. :–This appeal is filed -under Section 54 of Land Acquisition Act, against the award dated 16/07/2004, passed by 1st Additional District Judge, Indore, in Land Acquisition Case No.34/03, wherein the award is under challenge on the ground that the amount awarded is on higher side and be reduced.

2. The appeal is filed on 20/06/2005. An application was filed by respondent No.1 for dismissal of appeal on the ground that the appeal filed is barred by time, which is numbered as I.A. No.10392/05. In consequence appellant has filed an application for condonation of delay, which is numbered as I.A. No.10000/07.

3. Learned counsel for the appellant submits that award was passed on 16/07/2004, appellant applied for certified copy on 24/07/2004, which was ready on 18/08/2004 and was delivered to the appellant on 19/08/2004. It is submitted that thereafter, appellant came to know that the decree has not been framed by the learned Court below, hence an application was filed on 11/01/2005, which was allowed and consequently the decree was framed on 20/04/2005. Thereafter, the appellant applied for certified copy of the decree which was delivered to the appellant on 20/06/2005 and on the same day the appeal was filed by the appellant. Learned counsel submits that in view of the aforesaid factual position, there was no delay in filing the appeal. However learned counsel submits that as a matter of abandoned caution the application is filed, as the respondent No.1 is praying for dismissal of the appeal on the ground of delay.

4. Mr. V.K. Jain learned counsel for respondent No.1 submits that it is not necessary for the reference Court to prepare a decree of the award. The award itself is a deemed decree under Section 26(2) of the Land Acquisition Act, which reads as under :

> **Sec. 26 (2)** Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2, clause (2) and Section 2, clause (9), respectively, of the Code of Civil Procedure, 1908 (5 of 1908).

Learned counsel submits that while filing the appeal under Section 96 of the CPC no copy of decree is required to be filed by the appellant in view of the amendment on Order XLI Rule 1 of CPC vide amendment Act No.46/99 dated 01/07/2002. Learned counsel further submits that under Section 12(3) of the Limitation Act where a decree

or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment shall also be excluded and the word decree has been omitted by Act No-46/99. It is submitted that in the aforesaid position of law it cannot be said that the appeal is in time and the time spent by the appellant in getting the decree prepare and obtaining copy of the decree cannot be excluded. It is also submitted that no application has been filed by the appellant for exclusion of time. It is also submitted that the respondent No.1 has filed the appeal against the impugned award for enhancement of the amount of compensation on 27/10/2004, which is numbered as F.A.No.641/03. It is submitted that in consequence to that the present appeal has been filed.

5. In the matter of *State of Rajasthan Vs. Raj Singh,* reported in AIR 1996 SC, 2812, wherein the Hon'ble Apex Court has held that in memorandum of appeal not accompanied by decree of Trial Court as such decree, was not prepared by trial court and the decree filed in High Court when it was supplied by Trial court, it was held that appeal deemed to have been filed after supply of decree by Trial court and Limitation starts to run from that date. There is no inconsistency between provision of Act and Order XLI of CPC as regards appeal under Section 54 of the Act.

6. The law laid down by the Hon'ble Apex court in the matter of *State of Raiasthan Vs. Raj Singh* is arising out of an appeal which was filed prior to amendment in Limitation Act and also CPC, therefore, this Case is having no application.

7. From perusal of the record it is evident that award was passed on 16/07/2004 and the copy was delivered to the appellant on 19/08/2004. From 19/08/2004 to 10/01/2005 no action was taken by the appellant for moving an application for preparation of decree. It was also not necessary for the appellant to apply to the Court below for framing of decree, therefore, it cannot be said that there is no delay in filing the appeal. Appellant was not required to file the copy of the decree along with the appeal keeping in view Section 26(2) of the Land Acquisition Act and Section 12(3) of the Indian Limitation Act. However, since the impugned award is also under challenge in the appeal filed by the respondent No.1 and the appellant is yet to be served, who is also having a right to file cross-objections therefore, in the interest of justice the application for condonation of delay in filing the appeal is condoned, subject to payment of Cost of Rs.10.000/- which shall be payable to High Court Bar Association indore within a month.

Heard on admission.

8. Appeal is admitted for final hearing. Since respondents are present, therefore, no fresh notice is required to be served.

9. Appellant is directed to supply copy of memo of appeal to the respondents. Let this appeal be listed along with F.A. Nos.641/04, 585/04 & 361/05.

Both the applications stands disposed of.

Application disposed of.

I.L.R. [2008] M. P., 3172

APPELLATE CIVIL

Before Mr. Justice U.C. Maheshwari

13 February, 2008*

BADDA @ BARIK RAO & anr. ... Appellants

Vs.

KANTI BAI & ors. ... Respondents

Motor Vehicles Act (59 of 1988), Section 166 - ***Composite negligence - Appellants are tempo driver and owner - Claimants travelling in tempo - One truck by towing another truck came from opposite side in rash and negligent manner - Truck which was towed came from its side and collided with tempo - Tribunal held the case to be of composite negligence and saddled 50% liability on appellants - Held - No evidence adduced on behalf of truck driver, owner or insurer to prove any fault and negligence on the part of tempo driver - Injured and eye witnesses have proved with all probabilities that accident was the cause and consequence of act of offending truck - Appellants exonerated to indemnify the liability of awarded sum to claimants - Appeal allowed.*** (Paras 18 to 20)

मोटर यान अधिनियम (1988 का 59), धारा 166 – संयुक्त उपेक्षा – अपीलार्थी टेम्पो चालक और स्वामी हैं – दावेदार टेम्पो में यात्रा कर रहे थे – अन्य ट्रक द्वारा खींचा जा रहा ट्रक उतावलेपन और उपेक्षापूर्ण तरीके से विपरीत दिशा से आया – ट्रक जो खींचा जा रहा था उसकी तरफ से आया और टेम्पो से टकरा गया – अधिकरण ने मामला संयुक्त उपेक्षा का होना अभिनिर्धारित किया और अपीलार्थियों पर 50 प्रतिशत दायित्व डाला – अभिनिर्धारित – टेम्पो चालक का कोई दोष और उपेक्षा साबित करने के लिए ट्रक चालक, स्वामी या बीमाकर्ता की ओर से कोई साक्ष्य पेश नही की गई – क्षतिग्रस्त और प्रत्यक्षदर्शी साक्षियों ने सभी अधिसंभाव्यताओं के साथ साबित किया कि दुर्घटना दोषी ट्रक के कार्य का कारण और परिणाम थी – अपीलार्थियों को अधिनिर्णीत रकम के दायित्व की दावेदारों को क्षतिपूर्ति करने से विमुक्त किया गया – अपील मंजूर।

P.S. Das, for the appellants.

D.N. Shukla, for the respondent Nos.1 to 3.

ORDER

U. C. MAHESHWARI J.:–This order shall govern aforesaid both the appeals arising out of the joint award and same accident.

2. The appellants tempo driver and owner respectively filed aforesaid appeals being aggrieved by the award dated 8.5.2003 passed by Third Additional Motor Accident Claims Tribunal (FTC) Betul in claim case No.28/02 and 31/02 which have been passed jointly with other claim cases bearing No.29/02, 30/02 33/02 and 1/2003 arising out of the same accident whereby the claim of the respondent No.1 Kantibai (M. A. No.1735/03) was awarded for the sum of Rs.25,000/- in claim case No.28/02 while the claim of respondent No.1 to 3 (M.A.No.1738/03)

*M.A. No.1735/2003 (Jabalpur)

has been awarded for the sum of Rs.1,87,000/- in claim case No.31/02. They have also been awarded the interest on the aforesaid amount @ 4.5% p.a. from the date of filing their respective claim petitions. As per further findings the cause of the alleged accident was found to be the composite negligence of tempo and alleged offending truck drivers. In pursuance of it 50% liability to indemnify the awarded sum has been saddled against the appellants while remaining liability has been saddled against the driver, owner and Insurance Company of offending truck. M. A. No.1735/03 is preferred against the award passed in M. C. C. No.28/02 while M. A. No.1738/03 is filed against the award passed in M.C.C. No.31/02.

3. The facts giving rise to these appeals are that on 28.6.2001 at about 11.30 a.m. the respondent No.1 of M.A.No.1735/03 while the predecessor of respondent No.1 to 3 of M. A. No.1738/03 namely Bhaiyalal along with some other persons by boarding the tempo of appellant No.2 driven by appellant No.1 were going from Betul Bazar to Betul, on the way the truck bearing registration No.M.H.31-9672 by towing another truck bearing registration No.MH-31-7116 came from the opposite side in rash and negligent manner driven by respondent No.3 and after passing the aforesaid tempo by front truck the truck which was towed came out from its side and collided with the tempo. Resultantly, respondent No.1 of M. A. No.1735/03 sustained injuries while the Bhaiya Lal the predecessor of respondent No.1 to 3 of M. A. No.1738/03 sustained the injuries and succumbed to it. The injured and dead body of Bhaiya lal were taken to hospital where MLC report and post mortem report were prepared. The aforesaid both the trucks were registered in the name of respondent No.4 namely S. S. Amin while same were insured with respondent No.6, National Insurance Company Pvt. Ltd. The front truck, towing the other truck, was driven by respondent Deodas. On receiving the information, FIR was registered against the offending truck and its driver on the same day at P. S. Betul as Crime No.19/01. As per further averments of their respective claim petitions the respondent No.1 of M. A. No.1735/03, Kanti bai W/o Arun Tidgam the claimant sustained the injuries on her head, chest and buttock for which she took the surgical and orthopedic treatment in the hospital. On taking x-ray the fracture of pelvic bone was also revealed. She took bed rest for one and half month under the medical advice. With these averments she preferred her claim for the sum of Rs.5,50,000/- while respondent No.1 to 3 of M. A. No.1738/03 by stating that the age of their predecessor was 50 years on the date of his vehicular death and being shoe maker he was running the business of shoes and sandals from which he was earning Rs.4,500/- p.m. and respondent No.1 to 3 were dependent on him. Due to his untimely death they have been deprived from their dependency and also sustained mental agony of it. His wife Maina also deprived from the company of her husband. With these averments they filed their claim for the sum of Rs.13,70,000/-. Besides this in both the claims the interest @ 18% p. a. on the awarded sum are also prayed.

4. The aforesaid claims were preferred by impleading the truck owner, its driver and insurer, the National Insurance Company along with the appellants, the tempo driver and it's owner.

5. In the Tribunal aforesaid owner of the truck and its driver were proceeded ex-parte while in reply of the appellants it is contended that aforesaid truck collided the tempo because of negligent act of the truck driver. The towing rod between the trucks was very loose and drivers of both the trucks were under the influence of liquor, no precaution was taken showing the offending truck was towing to another truck. The alleged incident took place because of negligent act of truck driver and there was no fault or negligent on the part of the tempo driver. Hence, they are not liable to indemnify the claims of respondents/ claimants. The truck driver, owner and its insurer are liable for the same.

6. In reply of respondents Insurance Company, it is stated that driver of both the truck are not responsible for the alleged accident. The questioned tempo of the appellants was over loaded with the passengers and also driven in rash and negligent manner by the appellant No.1 and the same was the cause of the accident. The tempo was not insured; therefore , in order to show the sympathy the alleged offence was registered against the truck and its driver and prayed for exonerating it. In alternate it is stated that at the time of accident the alleged vehicles were plied contrary to the terms and conditions of the Insurance Police and without having any duly and effective driving licence. The vehicles were also not properly maintained by their owners and the accident was not reported to the Insurance Company within time. Hence, the liability could not be saddled against it. In any case it was a case of composite negligence of the drivers of truck and tempo both. Hence, the Insurance Company is not responsible to indemnify the entire claim of the respondents/claimants.

7. In view of the aforesaid pleadings as many as seven issues were framed in both the claims and same were tried along with other claim cases arising out of the same accident with consolidated trial in claim case No.28/02 as stated in para 10 of the impugned award. After recording the evidence on its appreciation by holding that the alleged accident was the cause and consequence of composite negligence of truck and tempo drivers, both the claim petitions were awarded for the aforesaid sum by saddling 50% liability against the appellants and remaining 50% liability against respondents' truck owner, driver and its insurance company. Being dissatisfied with the findings of the Tribunal holding the case of composite negligence, the appellants have come forward to this court with a prayer to exonerate them by holding entire liability against the respondents truck owner, driver and its insurer jointly and severally.

8. Shri P. S. Das, learned counsel for the appellants assailed the findings of the Tribunal holding the case of composite negligence on the ground that the evidence recorded by the Tribunal has not been appreciated in a proper way and

50% liability was wrongly saddled against the appellants. By referring the depositions of the witnesses, he said that any negligent act on the part of the tempo driver has not been proved. On the contrary it has been proved with all probabilities that the alleged accident was only the cause and consequence of rash and negligent driving of alleged offending truck. The criminal case was also registered. On holding investigation it was revealed that the driver of the offending truck was the only person responsible for the accident. In rebuttal inspite having the opportunity no evidence was adduced by any of the respondents. Although the appellants have also not entered into the witness box in order to explain the circumstance in which the accident took place but the passengers of their tempo and injured categorically stated that the alleged incident took place because of the negligence of the truck driver. In rebuttal of it no evidence is adduced either by the insurer or by the truck driver. Even by entering into witness box the truck driver did not explain the circumstance. Therefore, there was no occasion before the Tribunal to hold the case of composite negligence and leveled liability to indemnify 50% awarded sum on the appellants. He also referred the exhibited papers on record and prayed for setting aside the finding of the Tribunal holding composite negligence of the appellants with further prayer to exonerate them from its liability by allowing this appeal.

9. No one has appeared on behalf of the respondent/claimants and respondents truck owner and driver.

10. On the other hand counsel for the respondent/insurer by justifying the impugned award said that the same is based on proper appreciation and interpretation of the evidence and also is in conformity with law. It does not require any interference at this stage. He further said that the tempo of the appellants being overloaded was not under the control of its driver, appellant No.1, resultantly, it met an accident, no fault can be attributed against the alleged truck owner, its driver and insurer. In any case the tempo and its driver are equally responsible for the alleged accident as in the facts and circumstances their negligence could not be separated. Therefore, the liability of 50% awarded sum have rightly been saddled against the appellants and they cannot be exonerated from it, and prayed for dismissal of the appeal.

11. Having heard the counsel after examining the record of both the cases along with the award, I am of the considered view that the Tribunal has committed grave error holding the case of composite negligence and saddling the 50% liability to indemnify the awarded sum on the appellants. My aforesaid view is based on following reasons.

12. Kanti bai (A.W.1) the respondent No.1 of M. A. No.1735/03 and claimant of Claim Case No.28/02 while recording her deposition categorically stated that in the aforesaid accident the tempo was collided by the truck in which she sustained injuries. In her entire deposition including the cross-examination she did not state

any fault or negligence on the part of the tempo driver. It is also stated by her that she sat in the tempo at the backside along with other passengers. She categorically denied that tempo was over loaded. She also explained the circumstance in which the truck towing by the offending truck came out from its line and met the alleged accident.

13. Besides this Ashish Soni (A. W.2), claimant of Claim Case No.29/02, also deposed that by boarding the aforesaid tempo along with his mother he was going to Betul, on the way the offending truck by towing another truck came from opposite side and due to breaking the towing rod the back side truck came out from its line and met the accident with tempo (taxi) in which his mother has also sustained injuries and died. In his entire deposition, I have not found any evidence showing that tempo driver was responsible in any manner for the alleged accident, although he stated in para 9 of his deposition that 13-14 passengers were traveling in it. I deem fit to mention here that tempo of alleged nature had two seats at the back side from front to back on which the passengers are sat by facing to each other, in normal course six persons are sat at one side accordingly 12 persons would have been sat at the back side and including one person and the driver could have sat on the front seat, in such premises if the tempo was plied with 14 persons then it could not be inferred that it was overloaded.

14. Apart the above, in the deposition of Sundarlal (A.W.1) the claimant of claim case No.30/01, who also sustained the injury in the alleged accident on recording his deposition stated that the offending truck passed from the side of the tempo with short distance but the back side truck which was towing with the front truck came near to the tempo and met the accident. Such deposition of this witness was remained intact in the cross-examination. He did not state that tempo was overloaded. In paragraph 12 he categorically stated that backside truck, by leaving the line came to the roadside and caused the accident. In the same para he stated that 13-14 passengers were travelling in the tempo. So the allegation that tempo was overloaded is falsified by this witness.

15. Another witness Smt. Rohni Pandya (A.W.2) examined in claim case No.30/02, is also stated the same thing with slight difference but in cross-examination she stated that 20-22 passengers were sat in the tempo but in view of deposition of other witnesses, the testimony of this witness in this regard does not carry much weight.

16. The independent witness Manoj Tawde (A.W.2) examined in claim case No.31/02 categorically stated that on the date of the accident he was sitting near Bajrang temple where two trucks were coming from the Bhopal road, the back side truck was towing by front truck, the same were driven in zigzag manner and at the same time one tempo was coming from Betul Bazar at such moment the back side towing truck became unbalanced and met accident by running over the tempo. In such accident one person died on the spot while many got injured. He

further said that 6-7 passengers were traveling in such tempo. It is noted that this witness is not related to any of the parties of the case and I have not found any reason to discard his version because his testimony of the chief is remained intact in his cross-examination.

17. Apart the above the other passengers of the tempo Jaipal (A.W.1) examined in claim case No.1/03 also stated that alleged accident was made by the offending truck while driving the same in rash and negligent manner by its driver. In such accident he also got fracture in his left hand.

18. In view of the aforesaid evidence, it is apparent that in order to prove any fault and negligence on the part of the tempo or its driver no evidence is adduced on behalf of truck owner, driver and insurer, even in order to explain the circumstance to prove the case of composite negligence the respondent/driver or driver of towing truck are not examined to rebut the aforesaid evidence. Although the appellant have also not entered into the witness box to explain the circumstance but in any case the injured and eyewitnesses of the incident have proved with all probabilities that alleged accident was the cause and consequence of the aforesaid offending truck. I have not found any evidence showing that tempo was on fault in any manner or its driver committed any negligence. Hence, it could not be said that the incident took place because of contributory or composite negligence of tempo driver, appellant No.1.

19. It is settled proposition of law that every case is decided on the basis of its own fact, circumstance and recorded evidence available on record. Although in the claim cases the papers of the investigation relating to criminal case have some role to draw the inference. Unfortunately, in the case at hand according to papers of criminal case exhibited on record, it has been revealed that aforesaid offending truck and its driver are responsible for the alleged accident.

20. It appears from the impugned award that the Tribunal for holding the contributory negligence and saddling 50% liability interpreted the spot map prepared by the police during investigation in arbitrary manner, while going through the same in its entirety it is apparent that due to rash and negligence driving of the front side offending truck, the towing truck not only came out from the line of front truck but after meeting the accident it was turned toward Betul side, from which side it was coming. It shows the grave negligence on the part of the offending truck and backside truck and for such negligence only the truck, its owner and their insurer are responsible to indemnify the claim. It appears from the record that both the trucks were insured with the same respondent insurance company. Therefore, in any case the insurance Company along with the truck owner and driver jointly and severally responsible to indemnify the claim.

21. In view of the aforesaid discussion, the findings of the Tribunal based on spot map prepared by the police is not sustainable and the same is set aside.

22. Under the aforesaid premises, it is held that it was not the case of contributory or composite negligence; it was out right case the negligence of offending truck and its driver. In pursuance of it, it is held the Tribunal has committed grave error in holding that the alleged incident was the cause and consequence of truck and tempo both. Such findings of the Tribunal are hereby set aside.

23. In view of the aforesaid discussion by allowing this appeal the appellants are exonerated to indemnify the liability of awarded sum to the respondents/ claimants in the aforesaid respective their claims cases and liability to indemnify the entire sum in both the cases are saddled jointly and severally against the respondents S. S. Amin, the truck owner, Deodas, truck driver and its insurer, National Insurance Company. Till this extent the award of the Tribunal is modified while the other findings are hereby affirmed.

24. In the facts and circumstances of the case, there shall be no order as to the costs.

Appeal allowed.

I.L.R. [2008] M. P., 3178
APPELLATE CIVIL
Before Mr. Justice U.C. Maheshwari
22 February, 2008*

SATYANARAYAN AGRAWAL & ors. ... Appellants
Vs.
STATE OF M.P. & anr. ... Respondents

A. Transfer of Property Act (4 of 1882), Section 7 - *Persons competent to transfer - Transferor should be competent to transfer the property - If he did not have any right over the property, then he had no authority to transfer the same.* (Para 9)

क. सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 7 – अंतरण के लिए सक्षम व्यक्ति – अंतरणकर्ता को सम्पत्ति अंतरित करने के लिए सक्षम होना चाहिए – यदि वह सम्पत्ति पर कोई अधिकार नही रखता था तब उसे सम्पत्ति अंतरित करने का कोई प्राधिकार नही था।

B. Civil Procedure Code (5 of 1908), Order 39 Rule 1 & 2 - *Temporary Injunction - No Khasra entry showing that before executing sale deed, the disputed land was recorded in the name of seller - At this stage it cannot be inferred that sale deeds were executed by rightful owners of the land - No prima facie case or balance of convenience in favor of appellants to hold their possession - No ground to issue any ad interim temporary injunction.* (Para 13)

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 1 व 2 – अस्थायी व्यादेश – कोई खसरा प्रविष्टि यह नही दर्शाती कि विक्रयपत्र के निष्पादन के पूर्व विवादित सम्पत्ति

*M.A. No.1271/2007 (Jabalpur)

विक्रेता के नाम अभिलिखित थी – इस प्रक्रम पर यह अनुमान नही निकाला जा सकता कि विक्रयपत्र भूमि के अधिकारवान स्वामियों द्वारा निष्पादित किये गये – अपीलार्थियों का कब्जा अभिनिर्धारित करने के लिए कोई प्रथम दृष्ट्या मामला नही एवं उनके पक्ष में सुविधा का संतुलन भी नही – अंतःकालीन अस्थायी व्यादेश जारी करने का कोई आधार नही।

Case referred :

AIR 1973 SC 782.

P.S. Das, for the appellants.
J.K. Jain, for the respondents/State.

ORDER

U. C. MAHESHWARI J.:– This appeal is directed by the appellants/plaintiffs being aggrieved by the order dated 3.3.2007 passed by the District Judge, Satna in Civil Original Suit No.5-A/07, whereby their application filed under Order 39 Rule 1 and 2 r/w Section 151 of CPC restraining the respondent from making any construction on the disputed land has been dismissed.

2. The facts giving rise to this appeal in short are that the appellant filed a suit for declaration and perpetual injunction along with an application under Order 39 Rule 1 and 2 r/w Section 151 of CPC contending that the land situated at village Kolgawan, Satna bearing survey No.257/1-B/3 area 0.25 and survey No.257/1-B/4 area 0.25 were bought by their predecessor Meman Chandra Agrawal, from its earlier Bhumi-swami Yadunath Prasad and Saraswat Prasad through registered sale deeds dated 20.3.1989 and 13.7.1990 respectively. The earlier survey number was mutated in the name of the appellants while the later was mutated in the name of Meman Chandra Agrawal. The same was got diverted. On demise of said meman Chandra Agrawal, they inherited his land as Bhumiswami. The same was demarcated at the instance of the appellants on 8.10.97 and its report was approved by the Tehsildar Raghurajnagar. Subsequent to it, on first July, 1999, the fencing of such land was being carried-out by the respondents, the same was objected by them before the Tehsildar. In response of it, on behalf of respondent No.2, it was stated that such fencing is not being carried-out by it. Thereafter again at the instance of respondent No.2 some digging work was being carried out on 20.4.07. On resisting, the appellant No.4 was misbehaved by the officials of respondents, on which the aforesaid suit along with the application for issuing ad-interim injunction was filed.

3. In reply of the respondents by denying the aforesaid averments, it was stated that the land bearing survey No.255/2, 257/2, 258,299,675, 257(A) total area 8.59 acres bounded three sides by road while school building the fourth side is belonging to the State respondent No.1. It was never remained the property of the appellants. It being the play ground of the school was bounded by the wire fencing. The same was being replaced by constructing the wall with the permission of respondent No.1. The respondents or its official did not have any inimical

relation with the appellants. The educational institution of respondents is functioning there since 1953. The appellants with intention to snatch the property of the respondents filed the suit and application on the basis of false and fabricated documents. With these averments the prayer for dismissal of the application is made.

4. On behalf of both the parties the different Khasra entrees affidavits and other documents were produced on record. On consideration, it was held that appellants did not have any prima-facie case or balance of convenience in their favour, even on refusing ad-interim injunction they will not suffer any irreparable injury and in such premises the appellants' application has been dismissed by the trial court. Being dissatisfied with this order the appellants have come forward to this court with this appeal.

5. Shri P.S.Das, learned appellants counsel argued that the appellants are in possession of such land through their predecessors in title. They bought the same from its earlier owners through registered sale deeds dated 23.10.89 and 13.7.90 and got mutated their name in the record of rights. Its demarcation was also carried-out in the year 1997. The report of Revenue Officers in this regard was approved by the then Tehsildars. By referring the provision of Section 117 of Madhya Pradesh Land Revenue Code,1989 (in short the Act), he said there is presumption regarding correctness of the revenue record unless the contrary is proved. In view of such presumption and in the available circumstances the trial court ought to have issued ad interim injunction in favour of the appellants and prayed for the same by setting aside the impugned order.

6. On the other hand, Shri J.K.Jain, learned Govt. Advocate by referring the copies of Khasra entries since 1961-1962 to 1987-1988, said that during this period such land was never recorded in the name of the person from whom it was bought by the appellant or their predecessors. If it was not belonging to the sellers of their sale deeds then also they did not get any right in it. On the contrary, such land was recorded in the name of Aero drum, Govt. Road, Grass Land and later it was recorded in the name of Nazul Department State of Madhya Pradesh. Thus, mere on account of some mutation in the revenue record, the appellants did not have any legal right in such land. He specifically said that in the lack of any documentary evidence, it cannot be inferred that the appellants acquired the title or possession of the aforesaid land. According to his submission, in this background, the trial court has not committed any error in dismissing the application of the appellants and prayed for dismissal of this appeal.

7. Having heard the counsel, after perusing the pleadings and the papers placed by the parties on record along with the impugned order, I am of the considered view that the trial court has not committed any error in dismissing the appellants application.

8. It is settled preposition of the law that the Khasra entries are not the

conclusive documents to infer the title in favour of either of the parties but the Khasra entries may be considered to hold the prima facie proof of possession of the property if the same are made on the basis of the deeds executed by the right person. The Khasra entries of the concerned survey numbers for the period 1961-62 to 2006-07 are produced on record by the parties. As per provision of Section 109,110 of the Act, the name of Bhumi Swami is mutated on acquisition the title of such land from the earlier recorded Bhumi Swami. If the name of earlier Bhumi Swami is not found in the revenue record of the concerned year then mere on the basis of any document if some mutation is carried-out by the Tehsildar then it does not give any right to the person whose name is recorded in such manner.

9. As per provision of Section 7 of Transfer of property Act the transferor should be competent to transfer the transferable property. If he did not have any right over the property then, he had no authority to transfer the same. Such question was considered and answered by the Apex court in the matter of *Balai Chandra Mondal Vs. Smt Indurekha Debi and others-* AIR 1973 SC 782 in which it was held as under :-

> "3... The decision.....It is a thoroughly well-recognised principle that where the transferor himself has no title to the property he must at least have the authority to transfer it. Under Sec. 7 of the Transfer of Property Act only a person authorised to dispose of transferable property not his own is competent to transfer it either wholly or in part.....".

10. In view of the aforesaid on examining the case at hand it is apparent that not a single Khasra entry or any other document of this nature showing that before executing the alleged sale deeds in favour of the appellants or their predecessor the disputed land was recorded as Bhumi Swami in the name of such seller the transferor and the predecessor in title of the appellants. Therefore, at this stage, it cannot be inferred that the alleged sale deeds dated 23.10.89 and 13.7.90, were executed by the right full owners of the land it appears from the revenue record and other papers that the disputed land Survey No.257-2(A) area 11.45 acre was recorded in the year 1961-62 to 1962-63 in the name of Aero drum and 257-b area 0.88 acre was recorded in the name of State (Sarkari) while the Survey No.257-2-(b) area 0.25 was recorded in the name of Bharat Kumar S/o Chironjilal Jain. Besides this, in the same year the land bearing Survey No.257-1-A and 257-1-B are also recorded in the name of State (Khata Sarkari). Thereafter, in the khasra entry of the year 1969-70 to 1973-74, the survey No.257-1/A area 2.29 acre/0.925 hectare, is recorded in the name of Grass Land (Banjar Beed), while Survey No.257-1-B area 0.20/0.081 was recorded as Road (Sadak). During this period in the year 1971-72, such land was mutated in the name of Nazul Department State of Madhya Pradesh. For the period of 1974-75 to 1978-79, aforesaid both the survey numbers are recorded in the name of Nazul Department

State of Madhya Pradesh. Although in Column No.12, it is mentioned that Ravi Pratap Singh and Kiran Devi are in possession of some part of it as they have constructed their houses on it. In the Khasra for the year 1979-90 to 1983-84 the both survey numbers are recorded in the name of Nazul Department State of Madhya Pradesh as Bhumi Swami but in Kafiat column the possession of aforesaid Ravi Pratap Singh, Kiran Devi and one Brij Kishore Singh on some different parts are mentioned with the endorsement that they have made some construction on such part. In the Khasra entry of the year 1984-85 to 1988-89 again both the entries are recorded in the name of Nazul Department, State of Madhya Pradesh and in Kafiat column possession of Kiran Devi on some part of it is mentioned. In the Khasra of the year 1989-90 to 93-94, such land is recorded in the same name of Nazul Department, State of Madhya Pradesh but there is some endorsement in the year 1991-92 regarding some mutation of the appellants over the land. But in support of such mutation , I have not found any order or other document showing that such land was ever recorded or allotted to the persons the predecessors in title of the appellants. Even I have not found any order by which the different numbers have been given to different part of this land. According to Khasra of the year 1989-90 to 1993-94 the land 0.50 acre (0.202 hectare) bearing the survey No. 257/1/A, is recorded as Bhumi Swami in the name of Sarbat Prasad son of Jagannath Prasad but such name was not found as Bhumi swami in any earlier Khasra as mentioned above. I have not found any reliable documentary evidence in this regard showing that his name was duly recorded in the Khasra. It appears that under some conspiracy the alleged sale deeds got registered by the appellants or their predecessor on the basis of some stray entry in the Khasra and by taking advantage of such sale deeds, the disputed land got mutated by the appellant in the year 1991-92.

11. It is true that since 1991-92 till date of filing the suit, the name of the appellants or their predecessor are recorded as Bhumi Swami in the Khasra of the aforesaid land.

12. It is noted that as per the case of the respondents it being the Government land was remained as play ground of their School. Since long, it was bounded by the wire fencing and the same was being replaced by constructing the boundary wall. It appears from the record that some educational institution in the name of BTI was running in the building situated nearby the disputed land. Such institution is still running in the name of DIET. Some papers are also available on the record showing that the disputed land is belonging exclusively to the State of Madhya Pradesh.

13. In view of the aforesaid discussion, it is revealed that between the years 1961-62 to 1987-88 the disputed land was never recorded in the name of the predecessor of the appellants from whom they purchased the same. When it was not recorded in the name of their predecessor then how they acquired the title by

the alleged registered sale deeds. Although, all these things require elaborate enquiry which will be held by the trial court while adjudicating the matter after recording the evidence but at present, in the aforesaid circumstances, I have not found any prima facie case or balance of convenience in favour of the appellants to hold their possession of such land. In such premises it could not be said that in the absence of any interim injunction the appellants have to suffer any irreparable injury. Accordingly, I have not found any ground to issue ad-interim injunction against the respondents. Apart this, if any boundary wall is made by the respondents in pendency of this suit even then the appellants will not suffer any irreparable injury and subject to adjudication of the suit, they will have right to proceed against the respondents further. Under such circumstances, I have not found any perversity, illegality or irregularity in the impugned order passed by the trial court.

14. Therefore, this appeal being devoid of any merits, is hereby dismissed and the order of the trial court is hereby affirmed. However, it is clarified that the findings or any observation made in this order shall not come in the way of trial court in deciding the suit on merits. The trial court shall be at liberty to decide the suit without influencing any findings or observation made in this order.

15. Appeal is dismissed.

Appeal dismissed.

I.L.R. [2008] M. P., 3183
APPELLATE CIVIL
Before Mr. Justice U.C. Maheshwari
25 February, 2008*

SHIVCHARAN ... Appellant
Vs.
MOHANLAL & anr. ... Respondents

A. Evidence Act (1 of 1872), Section 91 - *Exclusion of oral evidence* *- Held - Once it is proved that the appellant signed the agreement of sale after reducing the same in writing then as per provision of Section 91 of the Act - Oral evidence led by appellant contrary to the terms of such agreement cannot be considered as admissible evidence.*– (Para 8)

क. साक्ष्य अधिनियम (1872 का 1), धारा 91 – मौखिक साक्ष्य का अपवर्जन – अभिनिर्धारित – जब एक बार यह सिद्ध हो जाता है कि अपीलार्थी ने विक्रय का अनुबन्ध लिखने के बाद उस पर हस्ताक्षर किये तब अधिनियम की धारा 91 के उपबंध के अनुसार – अपीलार्थी द्वारा ऐसे अनुबन्ध के निबंधनों के विपरीत दी गई मौखिक साक्ष्य ग्राह्य साक्ष्य के रूप में विचार में नही ली जा सकती।

B. Specific Relief Act (47 of 1963), Section 16(c) - *Specific performance of contract - Notice - Notice sent by plaintiff for execution of*

*F.A. No.327/1995 (Jabalpur)

sale deed received back with endorsement "Lene Se Inkar" - Held - Even in absence of statement of postman it may held that notice was produced for service and refused by appellant. (Para 9)

ख. विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 16(सी) – संविदा का विनिर्दिष्ट पालन – सूचनापत्र – वादी द्वारा विक्रयपत्र के निष्पादन के लिए भेजा गया सूचनापत्र "लेने से इंकार" के पृष्ठांकन के साथ वापस प्राप्त हुआ – अभिनिर्धारित – पोस्टमेन के कथन के बिना भी यह अभिनिर्धारित किया जा सकता है कि सूचनापत्र तामील के लिए भेजा गया और अपीलार्थी द्वारा लेने से इंकार किया गया।

Cases referred :

AIR 1976 SC 869, AIR 1948 Patna 406.

Rajiv Badkul, for the appellant.

R.S. Jaiswal with *Annpurna Sharma,* for the respondents.

J U D G M E N T

U.C. MAHESHWARI, J. :–The appellant/defendant has preferred this appeal being aggrieved by the judgment and decree dated 11.9.95 passed by the District Judge, Sagar in Civil Original Suit No.5-A/95 whereby the suit of the respondent No.1 has been decreed against him to refund Rs.55,000/- along with interest.

2. The facts giving rise to this appeal in short are that the respondent No.1 filed the suit against the appellant for specific performance on the basis of the agreement to sale dated 24.9.93 with alternative prayer to pass the decree for refunding the earnest money. As per averment of the plaint, the aforesaid agreement took-place between the parties in respect of the land comprising Survey No. 132/2 area 3 acre and Survey No.132/4 area 2 acre, total 5 acres situated at village Sattadhana. As per terms of the contract the appellant agreed to sale the aforesaid land in consideration of Rs.1,05,000/-, out of which Rs.55000/- was paid to him by to the appellant as earnest money . As per further terms, the registered sale-deed was to be executed by the appellant in favour of the respondent No.1 within a year after receiving the remaining consideration. At the time of execution of the agreement, the Bhu-Adhikar Rin Pustika and copy of B-1 Khatoni of the aforesaid land was also given to respondent No.1. After 8-9 months from the date of the agreement, in order to perform his part of the contract, he asked the appellant to execute the sale-deed after taking the remaining consideration. He also sent a notice dated 9.12.94. The same was returned back with an endorsement "refused to take". Accordingly, the respondent No.1 was remain ready and willing to perform his part of the contract while the appellant has not performed his part in this regard by executing the sale deed. With these pleadings the aforesaid suit was filed.

3. In the written statement of appellant/defendant, the execution of the agreement and receiving the earnest consideration of Rs.55000/- are denied. In addition, it is pleaded that the appellant took Rs.5000/- from the respondent as

loan. At the time of such transaction, the alleged stamp was given to the respondent No.1 and on repayment of the loan amount the aforesaid document was to be returned to the appellant. Such amount has been refunded, inspite it, such document are not returned by the respondent No.1. It is also pleaded that the land along with one house and its Well, is belonging to the joint family having the worth of Rs.5 lacs. The respondent No.1 took its Bhu-Adhikar Rin Pustika, copies of Khasra and B-1 Khatoni by giving an assurance that with the assistance of his relatives, he will make available the loan to the appellant from Tehsil. Subsequently, the respondent No.1 filed the suit on false pretext. Besides this, Rs.5000/- is also claimed as special damages under Section 35-A of the C.P.C.

4. In view of the pleadings of the parties, the trial court has framed as many as ten issues, on which the evidence was adduced by the parties. On appreciation of the same, by dismissing the suit of the appellant for specific performance, the decree for refunding the earnest money of Rs.55000/- along with interest at the rate of 6% P.A has been passed. Hence, the appellant/defendant has come to this court with this appeal.

5. Shri Rajiv Badkul, learned appearing counsel of the appellant assailed the impugned judgment and decree saying that the appellant being uneducated was in need of Rs.5000/-. The same was taken from the respondent NO.1. By taking advantage of the condition of the appellant, respondent No.1 took his signatures on blank stamp papers and later, by preparing the alleged agreement of sale mentioning payment of Rs.55000/- as earnest consideration, filed the aforesaid suit. He elaborated the arguments and said that the alleged agreement was not executed in presence of the person who signed the same as witnesses. He also referred the depositions of the alleged witnesses Dayaram (D.W.2), Mohan (D.W.3), Suresh Vishwakarma (P.W.2) and Tribhunesh Kumar Purohit (P.W.3) in this regard. By referring the deposition of Jagannath (P.W.4), he said that looking to the inconsistency of the testimony of this witness with the testimonies of the aforesaid witnesses, the conduct of the respondent No.1 is apparently suspicious and giving sufficient circumstance to draw the inference that some loan transaction of Rs.5000/- took place between the parties and by fabricating the false agreement to sale, the suit was filed for specific performance with alternative prayer of refunding the amount of Rs.55000/-. According to him, the trial court ought to have dismissed the entire suit of respondent No.1, but under the wrong premises the same has been decreed for refunding the earnest money. Such decree is not sustainable and prayed for setting aside the same by allowing this appeal.

6. Responding the aforesaid arguments, Shri R.S.Jaiswal, Senior Advocate assisted by Ku. Annapurna Sharma Advocate, by referring the deposition of the appellant Shivcharan (D.W.1) said that in view of his admission regarding his signature on agreement (Ex.P/1) and also the admission of its witnesses Dayaram (D.W.2), Mohan (D.W.3), Suresh Vishwakarma (P.W.2) and Tribunesh Kumar

Purohit (PW.3), regarding their signatures on agreement, it could not be inferred that the agreement was fabricated by the respondent No.1. On the contrary, it has been proved by admissible evidence that the alleged agreement was executed by the appellant to sale the alleged land in consideration of Rs.1,05,000/, out of which Rs.55000/- was taken by the appellant as earnest money. Besides this, by referring the provision of Section 91 and 92 of the Evidence Act, he said that the oral evidence of the witnesses is not admissible if the terms of the contract are reduced in writing and such document is proved on the record. He further said that as per available evidence, the suit ought to have been decreed by the trial court for specific performance also but the same has been decreed only for refunding the money. He fairly conceded that in the absence of any appeal, at the instance of the respondent, he is precluded to challenge such findings, but in any case, it was not a loan transaction of Rs.5000/-. In fact, Rs.55,000/- was paid in consideration of such agreement out of which nothing was refunded by the appellant. He also pointed-out additional circumstances that the appellant would have disclosed his defence regarding loan transaction of Rs.5000/- and its payment at the initial stage when the notice for performance of the contract (Ex.P/2) was given to the appellant but the same was returned unserved with an endorsement that appellant refused to take the same. Non reply of such notice gives sufficient circumstances to draw the inference that the appellant took false defence just to defeat the claim of the respondent No.1. With these submissions, he prayed for dismissal of this appeal.

7. Having heard the counsel after perusing the record, I am of the considered view that the trial court has not committed any error in passing the impugned decree for refunding the earnest money to the respondent No.1. It is apparent and admitted fact on record that Ex.P/1 the alleged agreement is signed by the appellant. The same was typed by the document writer Tribhunesh Kumar Purohit (P.W.3). After typing it is signed by him also. On recording his deposition, he deposed that being document writer it was written by him. Such agreement to sale was executed by the appellant in favour of respondent No.1 in respect of his five acres land in consideration of Rs.1,05,000/-, out of which Rs.55000/- was given as earnest money by the respondent No.1 to the appellant. Such payment was made after drafting the agreement. He has not only proved his signatures as scriber but also the signature of the executant Shivcharan along with the witnesses, namely Dayaram (D.W.2), Mohan (D.W.3) and Suresh Vishwakarma (PW 2). He specifically said that all these persons signed the agreement in his presence. On going through his cross-examination, I have not found any contents destroying the aforesaid version stated in-chief.Besides this, the other independent witnesses, namely, Dayaram (D.W.2) has deposed that he signed the aforesaid agreement after 2-3 days and signed the same in presence of Mohan Khangar and Suresh. He further stated that at the time of such signature, it was typed but at that time Shivcharan, the appellant was not present. Although, he stated that

such stamp was given to the respondent No.1 by appellant Shivcharan in consideration of the loan of Rs.5000/-, such sum returned in three different installments. However, he has admitted that at the time of his signature the agreement was typed and it was signed by Shivcharan. It appears that in order to support the appellant he has not stated any other thing regarding the alleged transaction. The other witness of the agreement Mohan (D.W.3) categorically stated that respondent took his signature on a typed stamp (Ex.P/1). As per further averments he was told by the respondent No.1 that such signature was taken in connection of loan transaction of Rs.5000/- with the appellant. He further said that no sum has been refunded by the appellant to respondent No.1 in his presence. According to him, no talk regarding money took place between the parties and the stamp was also not signed by the appellant in his presence. In cross-examination para-7, he stated that he signed the stamp paper voluntarily without any undue pressure. It appears from the record that earlier this witness was called by the plaintiff/respondent but he did not come and, at the instance of appellant, he came to record his statement. It shows his conduct supporting the appellant contrary to the agreement. The person may speak false but the circumstances never speak lie. In view of the aforesaid evidence, one thing is certain that the stamp of the agreement (Ex.P/1) was the same stamp, and was typed with its contents at the time of signature of the appellant and the witnesses.

8. In deposition the appellant Shivcharan (DW.1) stated that he did not enter in agreement for selling his property to the respondent No.1. The averments of agreement to sale are denied by him. In addition he stated that he did not take Rs.55000/- from the respondent. He asked the appellant to make available the loan from Tehsil, on which, respondent No.1 assured him for the same and in this connection he took his Bandhi (Rin Pustika) and the copy of the Khasra. He further stated that before 1 ½ year he took the loan of Rs.5000/- from the respondent for which he handed-over him the blank stamp with his signature, but the contents of it were not written in his presence. The loan taken by him was returned in three different installments of Rs.2000/- twice and 1000/- respectively. But he could not explained the actual date of taking the loan or its repayment. It is also not stated that on which date he demanded the alleged stamp from the respondent. He categorically stated that no notice was produced before him for its service. In para-6 of his in-chief, he categorically stated that at the time of handing over the stamp and Khasra, the witness Dayaram and Mohan Lal Kori were present. In view of this version of the appellant that the stamp was handed over in presence of Dayaram and Mohanlal, and according to such witnesses the stamp had contents when they signed it, the inference may be drawn that at the time of giving the stamp to the respondent the same was typed with the contents, in such premises, the version of the appellant saying that the signature was given on blank stamp-paper, is falsified. According to the testimony of the appellant, he took loan before 1 ½ years. His statement was recorded on 28th July 1995 and

the date of the alleged agreement (Ex.P/1) is 24.12.93 falling within the aforesaid duration. Thus, in view of the testimony of the appellant and his witnesses, it could be safely inferred that the alleged agreement (Ex.P/1) was executed by the appellant after receiving Rs.55000/- from the respondent. Once, it is proved that the appellant signed the agreement after reducing the same in writing then as per provision of Section 91 of the Evidence Act, the oral evidence led by either of the parties contrary to the terms of such agreement, cannot be considered as admissible evidence.

9. Besides the above, before filing the suit on behalf of the respondent No.1, in order to show his readiness and willingness to perform his part, a notice (Ex.P/2) for performance of the contract was given to the appellant through counsel by the registered post. Its postal receipt is also proved on the record as (Ex.P/3). The same was returned with an endorsement " Lene Se Inkar" (refused to take) which is evident by (Ex.P/4) also showing that it was sent on the correct address of the appellant. In view of the settled preposition even in the absence of any statement of the postman, such endorsement regarding refusal may be considered to hold that it was produced for service and refused by the appellant. Such question is answered by the Apex Court in the matter of *Puwada Venkateshwara Rao Vs. Chidamana Venkata Ramana*-AIR 1976 SC 869 in which it was held as under :-

> 10. The two decisions.....It may be that, on a closer examination of evidence on record, the Court could have reached the conclusion that the defendant had full knowledge of the notice and had actually refused it knowingly. It is not always necessary, in such cases to produce the postman who tried to effect service. The denial of service by a party may be found to be incorrect from its own admissions or conduct....."

10. In view of the aforesaid it is held that the appellant on production of the aforesaid notice for its service, refused to take the same and in that manner it would be deemed to be served. In such circumstance, it could be said that even on getting the opportunity to reply of notice by availing the same at the initial stage,he did not disclose his defence regarding loan transaction of Rs.5000/- and regarding blank stamp paper. It gives sufficient circumstance to draw the inference against the appellant that he took Rs.55000/- as stated in the agreement (Ex.P/1) and executed the same. Subsequently, on filing the suit, appellant has come to defend the same with false story of loan. Non reply of notice is sufficient circumstance to draw the inference as laid by the High Court of Patna in the matter of *Kameshwar Lal Vs. The King*-AIR 1948 Patna 406 in which it was held as under :-

> "The petitioner.....Further more, when Uttim Gorain sent a written notice to the petitioner to return the documents, the petitioner instead of replying that they had already been returned which is what one would

expect if that had been the case, sent no reply at all, and has given no explanation of his conduct in that behalf. In these circumstances, I am not prepared to hold that the inference drawn by the Courts below adverse to the petitioner is incorrect and I would accordingly discharge this rule."

11. It is settled preposition of the law that on account of any weakness of the defendant, the plaintiff is not entitled to get the decree unless the case is proved by him with all probabilities. In this respect, the respondent/plaintiff Mohanlal (PW 1) by recording his deposition has proved the alleged transaction and payment of Rs.55000/- as earnest money. His version is further supported by one of the signatory as witness of the agreement Ex.P/1, namely Suresh Vishwakarma (P.W.2). The scriber of Ex.P/1 Tribhunesh Kumar Purohit (PW.3) also proved the same. Thus it is held that the appellant has failed to prove his defence while the respondent has proved his case to get the decree for refunding the sum of earnest money with all probabilities.

12. The appellant has categorically admitted in his deposition that he is educated upto 9th standard. Hence, he could not be treated as uneducated person. Besides this by the above circumstances, it could not be inferred that the conduct of the respondent No.1 was suspicious in any manner. On the contrary, it appears that the appellant took the false defence with intention to defeat the suit of the respondent.

13. Under the aforesaid premises, I have not found any perversity, infirmity ,illegality or any error in the impugned judgment and decree. Resultantly, by affirming the same, this appeal being devoid of any merit is hereby dismissed. The appellant shall bear his own expenses of this appeal along with the cost of the respondent. The Advocate fee is quantified as per schedule. The decree be drawn-up accordingly.

14. The appeal is dismissed.

Appeal dismissed.

I.L.R. [2008] M.P., 3189
APPELLATE CIVIL
Before Mr. Justice N.K. Mody
11 March, 2008*

HARVILAS THROUGH L.RS. SMT. PREMLATA & ors. ... Appellants
Vs.
M/S SHARMA MOTOR TRANSPORT CO. & ors. ... Respondents

A. Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - *Bona fide requirement - Pleading of alternate accommodation in plaint - Not necessary as landlord was not owner of alleged alternate accommodation at the time of institution of suit - Judgment of court below set-aside and suit for eviction decreed - Appeal allowed.* (Para 10)

*F.A. No.12/2000 (Indore)

क. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) – वास्तविक आवश्यकता – वादपत्र में वैकल्पिक स्थान का अभिवचन – आवश्यक नही क्योंकि भूस्वामी वादपत्र संस्थित करने के समय कथित वैकल्पिक स्थान का स्वामी नही था – अधीनस्थ न्यायालय का निर्णय अपास्त और बेदखली का वाद डिक्री किया गया – अपील स्वीकार।

B. Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - *Suit for eviction on ground of bona fide requirement of two sons - Examination of one son only - Held - It is not the law that each and every person for whose requirement suit is filed has to be examined - Judgment of court below set-aside - Suit decreed - Appeal allowed.* (Para 11)

ख. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) – दो पुत्रों की वास्तविक आवश्यकता के आधार पर बेदखली का वाद – केवल एक पुत्र का परीक्षण – अभिनिर्धारित – यह विधि नही है कि प्रत्येक व्यक्ति, जिसकी आवश्यकता के लिए वाद पेश किया गया है, का परीक्षण कराया जाए – अधीनस्थ न्यायालय का निर्णय अपास्त – वाद डिक्री – अपील मंजूर।

Cases referred :

1985 MPRCJ SN 69, (2001) 8 SCC 431, 1997(2) MPLJ 360, 1998(1) JLJ 149, 2005(1) MANISA 165.

A.K. Sethi with *Harish Joshi,* for the appellants.

Brijesh Pandya, for the respondents.

JUDGMENT

N. K.Modv, J. :– Being aggrieved by the judgment and decree dated 23/12/1999, passed by XIIth Additional District Judge, Indore, in Civil Suit N0.12-A/1989, whereby the suit filed by the appellant for eviction was dismissed, the present appeal has been filed.

2. Short facts of the case are that the appellant filed a suit for eviction against the respondents on 19/12/1988 under Section 12(l)(a)(c)(f)(k)(m)&(o) of the M.P. Accommodation Control Act, 1961 (which shall be referred hereinafter as 'Act'). It was alleged that respondent M/s. Sharma Motor Transport Co. is a Partnership Firm and is tenant of the appellant in the suit accommodation situated at 6, New Loha Mandi, Indore, @ Rs.l,691/- per month, which includes water charges of RS.10/-. It was alleged that respondent is in arrears of rent from 01/07/1998, which has not been paid inspite of demand. It was also alleged that appellant is in need of the suit accommodation for bonafide requirement of his sons for carrying on business of steel. It was alleged that previously appellant was having rental shop at Khatiwala, Indore, but the same has been got vacated by the landlord of that premises from the appellant. It was alleged that appellant is having no other alternative accommodation of his own for carrying on the business of steel. It was prayed that a decree of eviction be passes against the respondent.

3. During pendency of the suit appellant gave up the ground under Section 12(l)(c)(k)(m) & (o) of the Act and the suit was contested between the parties

under Section 12(l)(a) & (f) of the Act. After framing of issues and recording of evidence learned Court below dismissed the suit on 29/09/1993, against which an appeal was filed by the appellant, which was numbered as F.A. No.233/93. During pendency of appeal, appellant filed certain documents along with an application I.A. No.2405/99. Vide judgment dated 12/05/1999, the appeal and the application was allowed and the documents were taken on record. Judgment and decree passed by learned Trial court was set aside and the case was remanded back to the learned Trial Court for re-deciding the suit. After recording of the additional evidence vide judgment and decree dated 23/12/1999, again the suit filed by the appellant was dismissed, against which present appeal has been filed.

4. Learned counsel for the appellant Mr. A.K. Sethi, sr. advocate, submits that the ground for dismissal of the suit taken by the learned Trial Court was that the appellant and his sons Sanjay & Vinod are alleging themselves to be broker in steel business and since the necessary documents has not been produced by the appellant to prove that appellant is continuing the business, therefore, the requirement cannot be said to be bonafide. Learned counsel submits that the findings of the learned Court below is vitiated under the law as the appellant has not filed the suit for continuing the business of steel, but the suit was filed for the need of starting the business of steel. It is submitted that in the circumstances there was no necessity for the appellant to file such documents,

5. Learned counsel further submits that another ground taken by the learned Court for dismissing the suit was that out of the two sons Vinod and Sanjay, appellant has not examined Vinod, for whose requirement the suit was filed. Learned counsel submits that since the need was for two sons Sanjay and Vinod and out of them Sanjay was examined, therefore, suit cannot be dismissed on the ground that Vinod has not examined. It is submitted that even otherwise it was not always necessary to examine the person for whose requirement the suit was filed. For this contention reliance was placed on a decision in the matter of *Smt. Sohan Bai Vs. Mazir Hussain:* reported in 1985. MPRCJ S.No. 69, wherein this Court has held that non-examination of the son of plaintiff cannot be a ground for dismissal of the suit when the requirement is proved from other evidence.

6. Learned counsel further submits that the another ground for negativing the decree of eviction on the ground of bonafide requirement is that the appellant is having plot No.329 at Loha Mandi, Indore, and its ownership has been suppressed by the plaintiff / appellant. Learned counsel submits that in F.A. No.233/93 appellant submitted necessary documents relating to plot No.329 of Loha Mandi, Indore, according to which appellant executed a registered power of attorney on 20/08/1982, in favour of one Hitesh Kumar Mehta on behalf of M/s. Saraf Traders. Learned counsel submits that the registered power of attorney was executed by the appellant after taking full consideration, therefore, appellant was no more owner of the property, which has been shown as alternative accommodation w.e.f. 20/08/1982,

i.e. prior to the date of filing of the suit. Learned counsel submits that Hitesh Kumar Mehta executed sale deed on 01/06/1991, which is Exhibit P-3, in favour of Ajay Kumar, therefore, it cannot be said that it was a sale during pendency of the suit. In alternative learned counsel further submits that the plot which has been shown as alternative accommodation was a lease hold plot and was open piece of land, which cannot be said to be an alternative accommodation for the purpose of defeating the claim of appellant for eviction under Section 12(1)(F) of the Act. Learned counsel further submits that even if it is assumed that it is in the hands of appellant then too, keeping in view the law laid down in the matter of *R.C. Tamrakar Vs. Nidi Lekha,* reported in (2001) 8 SCC, 431, wherein it was held that it is for the landlord to decide how and in what manner he should live and that he is the best judge of his residential requirement in deciding the question of the bonafide requirement, it is unnecessary to make an endeavour as to how else the landlord could have adjusted himself. It is-submitted that in view of the aforesaid position of law the judgment and decree passed by learned Trial Court be set aside.

7. Mr. Brijesh Pandya, learned counsel for the respondents argues at length and submits that learned Trial Court has rightly dismissed the suit. Learned counsel submits that in evidence it has came that appellant was having a plot bearing plot No.329 at Loha Mandi, Indore. This alternative accommodation is not suitable to the appellant has not been pleaded by the appellant in the plaint. It is submitted that since the availibility of alternative accommodation has not been pleaded by the appellant, therefore, it is obvious that appellant has not come with clean hands. For this contention reliance was placed on a decision in the matter of *Hakimuddin Saifi Vs. Prem Narayan Barchhiha,* reported in 1997(2} MPLI 360, wherein this Court has observed that the plaintiff must mention the fact in his plaint, if he had an alternative vacant accommodation, and that this alternative accommodation was not reasonably suitable for the purpose for which he is seeking eviction. For it, it is necessary that the claim of landlord must be bonafide.

8. Reliance was also placed on a decision in the matter of *Vikas Kumar Vs. Radhamal Sindhi,* reported in 1998 (1) JLJ, 149, wherein it was held that alternative accommodation not pleaded in plaint even non-suitability of such alternative accommodation also not averred, the suit is liable to be dismissed.

9. Learned counsel submits that the suit was filed on 19/12/1988, while the alternative accommodation was sold on 01/06/1991, which was on long lease, with the appellant for a period of 99 years w.e.f. 1985. It is submitted that in the facts and circumstances of the case learned Court below has rightly dismissed the suit. For this contention reliance was placed on a decision in the matter of *Chainmal Vs. Rani Bai,* reported in 2005(1) MANISA 165, wherein it was held that :

"It is revealed that after the need accrued, two shops were sold to Golcha. On going through the evidence, it is perceivable that 3-4 time different type of agreement was settled with Golcha for the sale of the entire building including the suit shop and, therefore, it can not be said that the need is bonafide. The landlady has to prove the bonafide need objectively. The bonafide requirement must be honest and not tainted with any oblique motive and should not be a mere desire or wish."

10. From perusal of the record it is evident that to prove the case appellant has filed power of attorney Exhibit P-2, dated 20/08/1982, which was executed by the appellant Harvilas, S/o. Harcharandas, Proprietor of M/s. Giraj Brothers in favour of M/s. Saraf Traders, wherein it is specifically mentioned that appellant has already sold the plot to M/s. Saraf Traders and also received the consideration and Saraf Traders has also raised the construction over the plot, therefore, the Power of Attorney has been executed in favour of Hitesh Kumar Mehta, to execute the sale deed. The document is registered document Exhibit P-3, is the sale deed, which has been executed by Hitesh Mehta, as Power of Attorney in favour of Ajay Kumar, S/o. Kiran Kumar, whereby the sale deed was executed. Appellant has also examined himself as P.W.-1, Prakash Chandra Jain, as P.W.-2, Sanjay, as P.W.-3, Ratanlal Saraf, as P.W.-4, R.S. Bhadoriya, as P.W.-5, Hitesh Mehta, as P.W.-6 and Ajay, as P.W.-7, while respondent has examined Gopal Sharma, as D.W.-1. It is true that initially appellant did not pleaded the fact that appellant is also owner of the plot No.329, situated at Loha Mandi, Indore, the reason for not stating the fact is obvious. The suit was filed in the year 1988, while power of attorney was executed by the appellant long before in the year 1982, which is registered irrevocable power of attorney and in that it was specifically mentioned that appellant has already received the consideration and purchaser has also raised the construction over the property. Thus, for all practical purposes the appellant was no more owner of the property since 1982. However, since it was not pleaded and it was brought on record that appellant is owner of the plot, therefore, the suit was dismissed and in appeal filed by the appellant all the related documents were filed by the appellant and the case was remanded by this Court to the learned Trial Court. At this stage also appellant did not make any amendment in the plaint and the suit was again dismissed Since appellant was not owner of the plot No.329 ofLoha Mandi, Indore, and already sold the plot for which power of attorney was also executed, therefore, it was not necessary at all for the appellant to plead that appellant is no more owner of plot No.329, Loha Mandi, Indore. Therefore, the dismissal of the suit by the learned Court below on this ground is illegal.

11. So far as non-examining of one of the person for whose requirement the suit is filed is concerned, since appellant examined one of the son for whose need the suit accommodation was required, therefore, there was no necessity to examine another son to prove the necessity. It is not the law that each and every person for whose requirement suit is filed has to be examined. So far as dismissal

of the suit on the ground that appellant has not filed any document relating to the business of broker is concerned, since appellant was not asking for eviction on the ground that appellant requires the accommodation for continuing the business of steel, therefore, there was no justification for dismissing the suit on the ground that appellant has failed to file and prove the documents relating to his business. Had it been a case of continuing the business, then it was absolutely necessary for the appellant to submit the cogent evidence, which includes documentary evidence to prove that appellant requires the suit accommodation for continuing his business. In the present case the need of the appellant is for starting the business of steel, therefore, it was not necessary for the appellant to file all such documents. In the facts and circumstances of the case this Court is of the view that appellant has proved that appellant requires suit accommodation for starting the steel business of his sons and for that purpose appellant is having no alternative vacant accommodation of his own in the city of Indore. In view of this the appeal stand allowed, the judgment and decree passed by the learned Trial Court stands set aside. No order as to costs.

Appeal allowed.

I.L.R. [2008] M. P., 3194
APPELLATE CIVIL
Before Mr. Justice A.K. Shrivastava
20 March, 2008*

RUKHMANIBAI SMT. (DEAD) THROUGH L.R.
GENDALAL GUPTA ... Appellant
Vs.
RAMDAYAL (DEAD) THROUGH L.Rs.
RAMESH & ors. ... Respondents

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(a) - ***Landlord-tenant relationship*** *- Rent note creating contractual tenancy of 11 months - No rent note executed thereafter - Held - After expiry of contractual tenancy, tenant still remains as tenant and becomes statutory tenant.*

(Para 18)

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ए) – भूस्वामी–किरायेदार सम्बन्ध – किरायानामा से 11 माह की संविदात्मक किरायेदारी सृष्ट – तत्पश्चात् कोई किरायानामा निष्पादित नही – अभिनिर्धारित – किरायेदार संविदात्मक किरायेदारी की समाप्ति के पश्चात् भी किरायेदार की तरह रहता है और वैधानिक किरायेदार बन जाता है।

Case referred :

AIR 1972 SC 819, AIR 1961 SC 1067, 1964 JLJ 87, 1985 JLJ 527, 2002(2) JLJ 69, 1980 JLJ 1, 1993 JLJ 136.

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*S.A. No. 373/1986 (Jabalpur)

A.G. Dhande with *Dharmendra Soni,* for the appellant.
K.N. Agrawal, for the respondents.

JUDGMENT

A.K. SHRIVASTAVA, J. :–Feeling aggrieved by the impugned judgment and decree dated 28/3/1986 passed by learned Additional District Judge, Burhanpur in Civil Appeal No. 18-A/84 dismissing the suit, this second appeal has been preferred by the plaintiff.

2. Original plaintiff is Smt. Rukhmani Bai, who filed a suit on 17/4/1979 i.e. near about 29 yeas ago for eviction on the ground envisaged under section 12 (1) (a) of the M.P. Accommodation Control Act, 1961 (in short 'the Act') against original defendant Ramdayal. The suit was decreed by the learned trial Court and the appeal which was filed by the defendant/respondent has been allowed by the impugned judgment and decree and the suit of plaintiff has been dismissed.

3. Original plaintiff/appellant Smt. Rukhmani Bai died during the pendency of this second appeal and her L.R. Gendalal Gupta has been brought on record as appellant. During the pendency of this appeal original defendant/tenant Ramdayal also died and on filing of application for substitution this Court on 26/4/2002 directed to bring his L.Rs. on record.

4. In brief the suit of plaintiff is that the suit house was purchased by her from one Goura Bai vide registered sale-deed dated 26/2/1944. The said house was purchased by her husband in her name and after purchasing the suit property, possession was obtained. In the suit house earlier some tenants were residing and thereafter the defendant on being asked by him to let out the suit accommodation, he was inducted as tenant by the husband of plaintiff Bajrang Lal Gupta at the rate of Rs.16-50 paise which comes to Rs.198/- yearly, but the tenant was paying Rs.200/- per annum. The suit house was given to the defendant during the life time of Bajrang Lal, husband of plaintiff for 11 months and a written rent note was executed. After the efflux of contractual tenancy, the tenant continued to reside in it on the same terms and conditions and on same rate of rent Rs.16-50 paise per month. The tenancy is monthly and commences from 21st day of each month and terminates on 20th day of next month. The husband of plaintiff, namely, Bajrang Lal died on 20th January, 1971 and the rent was paid by the tenant up-to 21/1/1971, viz., till the date of death of her husband and from that date despite demand being made from the defendant rent has not been paid to the plaintiff.

5. The plaintiff through her Advocate sent notice dated 4/12/1978 to the defendant and made a demand to make the payment of rent to her excluding the rent which has become time barred. By the said notice tenancy of defendant has also been determined. Despite notice dated 4/12/1978 has been received by the defendant on 19/12/1978, defendant neither paid nor tendered rent to the plaintiff nor gave possession of the suit accommodation. Hence the plaintiff prayed that the rent which is within limitation, viz., w.e.f. 21/3/1976 to 20/3/1979 which comes to

Rs.600/- be paid and the possession of the suit accommodation be also delivered to her.

6. The defendant denied the plaint averments and has pleaded that plaintiff is not the owner of the suit property and the suit accommodation has not been purchased by plaintiff's husband in the name of plaintiff. The defendant was never inducted as tenant of plaintiff. The execution of rent note for 11 months at the rate of Rs.16-50 paise per month has been specifically denied. In the alternative a plea has also been raised that in case it is found that the rent note was executed in the name of defendant, the same be held to be **Barainam (sham).**

7. According to the defendant he is residing in the suit accommodation since 1956 and has acquired ownership right by way of adverse possession. Since he is not the tenant, the question of paying rent does not arise. It has also been pleaded by the defendant that he never paid any rent.

8. However, in the written statement it has been specifically admitted that notice dated 4/12/1978 sent by the plaintiff was received by him, but the said notice is illegal and since he is not the tenant, therefore, the question of payment of rent and giving possession of the suit accommodation to plaintiff does not arise.

9. In the special pleas it has been pleaded by the defendant/tenant that indeed he is the owner of the suit accommodation. The defendant was not having cordial relations with Narayan Singh who was the son of erstwhile owner of suit accommodation Goura Bai, widow of Gopal Singh and because said Goura Bai wanted to get the suit property sold and since defendant was having good relations with Hari Prasad whose sister is plaintiff Smt. Rukhmani Bai and because Hari Prasad was not having sound financial condition, as such suit property was purchased by the defendant in the name of plaintiff Smt. Rukhmani Bai and in this manner the sale-deed was executed on 26/2/1944 in the name of plaintiff Smt. Rukhmani Bai. The defendant is possessing the suit accommodation as owner and he was never inducted as tenant. An alternative plea is also raised by the defendant that in case he is not found to be the owner of the suit property, since he has acquired ownership right by way of adverse possession, therefore, this suit is not maintainable.

10. Later on by amending his written statement defendant added para 16 and pleaded that he was neither inducted as tenant by the husband of plaintiff Bajrang Lal nor he paid any rent to said Bajrang Lal. However, in case it is found that defendant wrote any rent note dated 21.9.1954 in favour of Bajrang Lal since contractual period of tenancy came to an end on 20/8/1955 and thereafter defendant never paid any rent to Bajrang Lal, therefore, in this manner also the defendant has perfected his ownership right by way of adverse possession. On these premised pleadings it has been prayed that this suit be dismissed.

11. The learned trial Court framed necessary issues and after recording the evidence of the parties came to hold as under :-

(i) the suit accommodation is owned by plaintiff;

(ii) defendant is the tenant of plaintiff;

(iii) suit accommodation was given by plaintiff's husband Bajrang Lal to defendant on tenancy basis on 21/9/1954 at the rate of Rs.16-50 paise per month, but this fact has not been proved that in place of yearly rent Rs.198/-, defendant was paying yearly rent Rs.200/-; and

(iv) rent note Ex.P-6 dated 21/9/1954 executed between defendant and plaintiff is not **Barainam.**

Since defendant did not deposit the rent for which he was legally bound to deposit under section 13 (1) of the Act, his defence was struck off under section 13 (6) of the Act. Eventually, the learned trial Court passed decree of eviction as well as payment of rent w.e.f. 21/3/1976 till the date possession is delivered to the plaintiff.

12. The defendant, feeling aggrieved by the judgment and decree passed by the learned trial Court preferred first appeal which has been allowed by holding that :-

(i) rent note Ex.P-6 was executed between plaintiff and defendant;

(ii) however, the rent note Ex.P-6 is a sham document;

(iii) on the basis of execution of rent note Ex.P-6 which is a sham document, relationship of landlord and tenant between the plaintiff and defendant is not established;

(iv) after efflux of period of contractual tenancy of 11 months mentioned in document Ex.P-6, the defendant did not pay rent of the suit accommodation to plaintiff or to her husband Bajrang Lal; and

(v) the suit is barred by time in view of Article 67 of the Indian Limitation Act.

In this manner the present second appeal has been filed by landlord/ plaintiff.

13. On 11/1/1986 this Court admitted the second appeal on the following substantial questions of law :-

"(i) Whether there is relationship of landlord and tenant between the parties to the suit on the basis of Kirayanama Ex.P-6 ?

(ii) Whether on the material on record, the finding of the lower appeal Court that the Kirayanama Ex.P-6 was 'barainam' is perverse ?

(iii) Is the suit barred by time ?"

14. The contention of Shri A.G. Dhande, learned senior counsel for the appellant/ plaintiff is that the relationship of landlord and tenant between the parties has been duly established by Kirayanama (rent note) Ex.P-6 the execution of which has not been turned down even from the evidence of defendant. Further it has

been contended by learned senior counsel that the finding of the lower appellate Court that rent note Ex.P-6 was **Barainam (sham)** is perverse and the suit of plaintiff cannot be said to be barred by time. The contention of learned senior counsel is that the learned trial Court has assigned cogent reasons and passed the decree of eviction. The defendant/tenant also did not deposit rent in terms of section 13 (1) of the Act and the learned trial Court struck off his defence by exercising powers conferred to it under section 13 (6) of the Act and, therefore, since no rent has been deposited during the pendency of the suit by the tenant, the decree of eviction has been rightly passed by the learned trial Court.

15. On the other hand, Shri K.N. Agrawal, learned counsel appearing for the respondent/tenant has argued in support of the impugned judgment and has submitted that if it is held that defendant was inducted as a tenant on the basis of Kirayanama (Ex.P-6) for 11 months, after the expiry of period of contractual tenancy, the status of defendant is tenant at sufferance. In this context he has placed reliance on two decisions of the Supreme Court *Bhawanji Lakhamshi and others v. Himatlal Jamnadas Dani and others* AIR 1972 SC 819 and *Ganga Dutt Murarka v. Kartik Chandra Das and others* AIR 1961 SC 1067.

16. Having heard learned counsel for the parties, I am of the view that this appeal deserves to be allowed and the suit is liable to be decreed.

17. Regarding substantial questions of law no. (i) and (ii) :-

Learned trial Court while deciding Issues no. 3 as well as 4 (a) and (b) gave a specific finding that the rent note (Kirayanama) Ex.P-6 dated 21/9/1954 has been executed by the defendant in favour of plaintiff. The learned first appellate Court also in para 7 of the impugned judgment held that the execution of rent note Ex.P-6 in favour of plaintiff by defendant has been proved. The finding so arrived at by the two Courts below is a pure finding of fact. On going through document Ex.P-6 Kirayanama (rent note) it is luminously clear that defendant denoting himself to be the tenant of the suit accommodation agreed to pay monthly rent at the rate of Rs.16-50 paise. The execution of Kirayanama (rent note) Ex.P-6 dated 21/9/1954 has been found to be proved by the two Courts below which is a pure finding of fact and defendant never assailed the said finding on that issue before the first appellate Court by filing cross-objection and it had attained finality. Hence, the relationship of landlord and tenant between plaintiff and defendant has been established by this document and for no rhyme or reason it could be held that relationship of landlord and tenant is not proved through this document. Indeed the learned first appellate Court by misconstruing this document on irrelevant consideration came to hold that though the execution of rent note is proved but relationship of landlord and tenant is not proved. To me, after execution of the rent note and since it has been found to

be proved, for all practical purposes, the defendant is tenant of plaintiff. I may further add that there is yet another important document Ex.PD-5 which is the certified copy of application submitted by defendant Ramgopal for obtaining Ration Card and in this application he has admitted plaintiff Rukhmani Bai to be his landlord. Thus by virtue of this document also the case of plaintiff is established that the relationship between her and defendant is of landlord and tenant. Thus I have no scintilla of doubt that by these two documents, the relationship of landlord and tenant between the parties has been fully established.

18. True, after expiry of contractual tenancy of 11 months, no fresh rent note was executed between the plaintiff and defendant. But, it will not somersault the case of plaintiff. Now it is well settled in law that after the expiry of contractual tenancy, the tenant still remains as tenant and he becomes statutory tenant thereafter. In this context, I may profitably place reliance on Division Bench decision of this Court *Premdas v. Laxmi Narayan* 1964 JLJ 87 and Single Bench decision of this Court *Gulshan (Smt., Dr.) v. Sahdevi Pal (Smt.) and another* 1985 JLJ 527. The Division Bench in the case of *Premdas* (supra) in paras 6 and 7 has specifically held that after the expiry of contractual tenancy, under section 12 of the Act the tenancy rights are protected and the tenant would be statutory tenant. Needless to emphasis the suit on the ground envisaged under section 12 (1) (a) of the Act was filed against the tenant after sending notice dated 4/12/1978 to the defendant making demand of rent w.e.f. 21/3/1976 to 20/3/1979 and the receiving of said notice has been admitted by the defendant in his written statement.

19. In the present case, admittedly no rent has been deposited by the tenant in the trial Court in terms of section 13 (1) of the Act. It is well settled that in a suit on the ground referred to in section 12 of the Act or in an appeal or other proceedings the tenant is obliged to deposit entire rent due as required under section 13 (1) of the Act and further he is required to deposit monthly rent by the 15th day of each succeeding month in terms of section 13 (1) of the Act. Thus, if the tenant has not deposited the rent in terms of section 13 (1) of the Act, the consequences are shown under section 13 (6) of the Act and under the said provision his defence would be struck off. Admittedly the tenant/respondent did not deposit the rent in terms of section 13 (1) of the Act and, therefore, the learned trial Court rightly struck off his defence vide order dated 28/1/1983. Indeed in the judgment of learned trial Court (para 25) while deciding issue no. 1 (b) this finding finds place. The Supreme Court in the case of *R.C. Tamrakar and another v. Nidi Lekha* 2002 (2) JLJ 69 has held that if the tenant has not deposited the rent in terms of section 13 (1) of the Act, the eviction decree would be passed.

20. The substantial questions of law no. (i) and (ii) are thus answered that relationship of landlord and tenant between the parties has been proved and the finding of learned first appellate Court holding Kirayanama (rent note) Ex.P-6 to

be **'Barainam' (sham)** is perverse and is based on irrelevant consideration by misinterpreting material documents rent note Ex.P-6 and Ex.PD-5 clearly establishing the relationship between the plaintiff and defendant to be of landlord and tenant. The finding of learned first appellate Court is against the law without paying any heed to the situation that even after the expiry of contractual tenancy, the status of tenant would be of statutory tenant.

21. Regarding substantial question of law no. (iii) :-

The suit of plaintiff cannot be said to be barred by time because in view of the Constitution Bench decision *V. Dhanapal Chettiar v. Yesodai Ammal* 1980 JLJ 1 quit notice under section 106 of the T.P. Act and the determination of tenancy is not required to the accommodation where the Rent Control legislation (in the present case 'the Act') is applicable. In a latter decision *Munshi Khan v. Maya Devi* 1993 JLJ 136 by placing reliance on the decision of the Supreme Court *V. Dhanapal Chettiar* (supra) in para 10 it has been laid down by Single Bench of this Court that concept of contractual tenancy has been totally vanished. According to the learned first appellate Court the suit is barred by time because after termination of contractual tenancy on 20/8/1955, the present suit which has been filed on 17/4/1979 has become barred by time as the same has been filed after 12 years. To me, the said finding is palpably incorrect approach of law in view of the decision of Constitution *Bench V. Dhanapal Chettiar* (supra) and hence the suit cannot be said to be barred by time. The substantial question of law is thus answered accordingly.

22. Resultantly this appeal succeeds and is hereby allowed. The impugned judgment and decree passed by learned first appellate Court dismissing the suit of plaintiff/respondent is hereby set aside and the judgment and decree passed by the learned trial Court is hereby restored. The respondents shall bear the cost of appellant. Counsel's fee Rs.2,000/-, if pre-certified.

Appeal allowed.

I.L.R. [2008] M. P., 3200
APPELLATE CIVIL
Before Mr. Justice Abhay Gohil
31 March, 2008*

GAYAPRASAD & anr. ... Appellants
Vs.
STATE OF M.P. ... Respondent

A. Public Trusts Act, M.P. (30 of 1951), Section 32, Land Revenue Code, M.P. 1959, Sections 57 & 158 - *Whether a Pujari, Manager or Trustee*

*S.A. No.194/1997 (Indore)

be the owner of temple, when it is recorded in the name of deity in the revenue records - Held - It is a Public Temple, if the land is recorded in the name of deity, deity is having right to hold property being juristic person - Pujari has a limited right to perform Pooja-Archana - He has the right of inheritance subject to qualification and is not automatic - No Pujari or Trustee or Manager can claim the title in respect of the religious property and such property shall always belong to deity - Pujari can be removed if he is otherwise disqualified or is not able to manage the temple property. (Para 10)

क. **लोक न्यास अधिनियम, म.प्र. (1951 का 30), धारा 32, भू राजस्व संहिता, म.प्र. 1959, धाराएँ 57 व 158** – क्या एक पुजारी, प्रबंधक या न्यासी मंदिर का स्वामी होता है, जबकि यह राजस्व अभिलेखों में देवता के नाम अभिलिखित है – अभिनिर्धारित – यह एक सार्वजनिक मंदिर है, यदि भूमि देवता के नाम अभिलिखित है, देवता को विधिक व्यक्ति होने से सम्पत्ति धारण करने का अधिकार होता है – पुजारी को पूजा–अर्चना करने का सीमित अधिकार होता है – उसे योग्यता के अध्यधीन उत्तराधिकार का अधिकार होता है स्वतः नही – कोई पुजारी, न्यासी या प्रबंधक धार्मिक सम्पत्ति के सम्बन्ध में स्वत्व का दावा नही कर सकता और ऐसी सम्पत्ति सर्वदा देवता से सम्बन्धित होगी – पुजारी को हटाया जा सकता है यदि वह अन्यथा निरर्हित हो जाता है या मंदिर सम्पत्ति का प्रबंध करने के लिए समर्थ नही है।

B. Land Revenue Code, M.P. (20 of 1959), Section 117 - *Whether Collector's name be recorded unilaterally without giving notice to the Pujari - Held - Unilaterally recording the name of Collector was bad in law but will continue in the interest of deity - The Pujari will continue to hold the office if not held to be otherwise disqualified.* (Para 10)

ख. **भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 117** – क्या कलेक्टर का नाम पुजारी को सूचनापत्र दिये बिना एकपक्षीय रूप में अभिलिखित किया जा सकता है – अभिनिर्धारित – एकपक्षीय रूप में कलेक्टर का नाम अभिलिखित करना विधि की दृष्टि में दोषपूर्ण है लेकिन देवता के हित में जारी रखा जाएगा – पुजारी पद पर बना रहेगा यदि अन्यथा निरर्हित होना अभिनिर्धारित नही किया गया हो।

C. Public Trusts Act, M.P. (30 of 1951), Sections 2(4), 4 & 5 - *Private temple is not covered by provisions of the Act.* (Para 11)

ग. **लोक न्यास अधिनियम, म.प्र. (1951 का 30), धाराएँ 2(4), 4 व 5** – निजी न्यास, अधिनियम के उपबंधों से आच्छादित नही होता है।

D. Land Revenue Code, M.P. (20 of 1959), Section 158(1)(b) - ***Natural Justice*** - *The person claiming Bhumiswami rights over the land belonging to public temple, cannot be evicted without giving an opportunity of hearing, even if the Government alleges him to be a trespasser - Notice is necessary before taking action.* (Para 11)

घ. **भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 158(1)(बी)** – **नैसर्गिक न्याय** – सार्वजनिक मंदिर से सम्बंधित भूमि पर भूमिस्वामी अधिकारों का दावा करने वाले व्यक्ति

को सुनवाई का अवसर दिये बिना बेदखल नही किया जा सकता, यद्यपि सरकार उसे अतिचारी होना अभिकथित करती हो – कार्यवाही करने के पूर्व सूचनापत्र आवश्यक है।

Cases referred :

(2005) 1 SCC 457, AIR 1970 SC 439, 1999 RN 25, 1999 RN 392, LPA No.33/1994 decided on 27.07.2005, 1985 RN 317, 1994 RN 128, AIR 1992 SC 1239.

B.I. Mehta, for the appellants.

Lokesh Bhatnagar, G.A., for the respondent/State.

JUDGMENT

ABHAY GOHIL, J. :–This second appeal filed by the appellants/plaintiffs was admitted on 27-04-1998 on the following substantial question of law:

> "a. Whether the first appellate Court has gone wrong in interpreting the material document Ex-P/3 and whether wrong interpretation has resulted in the decree liable to be dislodged ?
>
> b. Whether the first appellate Court has committed and error of law in dislodging and demolishing the judgment and decree passed by the trial Court contrary to the principles of law laid down in A.I.R. 1974 S.C. 405 (*Baburao Bagaji Karemore and others Vs. Govind and others*) ?"

2. The brief facts of the case are that plaintiffs filed a suit for declaration of title and permanent injunction against the respondent -State, stating therein that suit land bearing survey No. 1 admeasuring 6.584 hectare, 2 admeasuring 0.086 hectare, 3 admeasuring 1.497 hectare and 2 admeasuring 6.929 hectare, total area 15.982 hectare, situated in village Barda, Tehsil Khategaon, on which temple of Shri Krishna is situated, was given to his father Kaluram and Gotulal by the then Zamindar of Chuhumat as a gift, which was free from land revenue, on the condition that he will perform Pooja -Archana of the temple. Since then plaintiffs are in possession and enjoying the land as Bhumi Swami. They have acquired the rights in the property under the provisions of Section 158 of M.P. Land Revenue Code and they have also become Bhumi Swami on the basis of their adverse possession, but without giving any notice Tehsildar of Khategaon has recorded the entry in the Khasra and land record and has mentioned the name of collector as manager and the land is being auctioned to give it on Patta.

3. In the suit, written statement was filed by the respondent/State and it was stated that the land was not given as a gift but it is recorded in the name of deity and status of the plaintiffs is as of Pujari. The learned trial Court after considering the plaintiff's evidence held that the aforesaid land was given by the then Zamindar to the forefather of the plaintiffs, they are in possession and paying the land revenue. Since no notice was given to them, therefore, entering the name of Collector in the land record without any notice is illegal and decreed the suit vide judgment dated 12-01-1993 in favour of plaintiffs. Against which State

has filed first appeal. The learned first appellate Court vide judgment dated 04-02-1997 set aside the judgment of the trial Court and held that in the documents Ex-P/1 and P/2, land is recorded in the name of deity Shri Ram Mandir through Pujari Gaya Prasad and Ex-P/3 is a copy of Danpatra in which it has been mentioned that he has given the land for the temple and income of the land shall be used for performing Pooja -Archana and for celebrating religious festivals and Pujaris Kaluram and Gotulal will manage the land. They will cultivate, keep it in their possession and also consume the income. Considering the provisions of Section 158 of M.P. Land Revenue Code, lower appellate Court found that the land was gifted to the temple and Pujaris were appointed as trustees and right was also given that they will be entitled to consume the income of the temple and set aside the judgment and decree granted by the trial Court and also up held the action of the Tehsildar in recording the name of the Collector as manager. Against which this second appeal has been filed by the appellants/plaintiffs which was admitted on the aforesaid substantial question of law.

4. I have heard Shri B.I. Mehta, learned counsel, appearing for the appellants and Shri Lokesh Bhatnagar, learned Government Advocate, appearing for respondent/State.

5. Shri Mehta, criticized the judgment passed by lower appellate Court and submitted that the lower appellate Court has totally overlooked the document Ex-P/3 which is copy of the 'Will' and has also overlooked this fact that the revenue officers before recording the name of collector as manager of the temple in revenue record, has not given any opportunity to the appellants. He placed reliance on a unreported Division Bench decision in case of *State of Madhya Pradesh Vs. Ghanshyam Das and others,* reported in 1999 RN 25 and a decision of Division Bench in the case of *State of Madhya Pradesh and others Vs. Mandir Shri Khande Rao,* reported in 1999 RN 392.

6. Per contra Shri Bhatnagar, learned Government Advocate placed reliance on a decision in the case of *Thayarommal (dead) by L.R. Vs. Kanakammal and others* reported in (2005) 1 SCC 457 and also on a decision in the case of *Kalanka Devi Sanshthan Vs. The Maharashtra Revenue Tribunal and others,* reported in AIR 1970 SC 439..

7. Having heard the learned counsel for the parties, it is true that in the document Ex-P/3 which is gift deed, it has clearly been mentioned that the land is gifted and entrusted to deity and Kaluram and Gotulal were appointed as trustees and rights have given to them to cultivate the land, to give it to others for cultivation and also to use and consume the income, therefore, it is also true that up to some extent the findings recorded by the lower appellate Court are not contrary to the law. On the basis of document and oral evidence evidence on record, it can be safely held that the land is given primarily to the deity for the purpose of Pooja- Archana and Kaluram and Gotulal were appointed as Pujaris

and they were also given rights to manage the possession over the land. In the document Ex-P/1 which is Khasra entry pertaining to the year 1978-79 and Ex-P/2 which is Khasra entry pertaining to the year 1975 to 1979 land is recorded in the name of Shri Ram Mandir through Pujari Gaya Prasad, therefore, it is clear that in the land, appellants are having limited right of Puja -Archana and to use some part of the income of the land for their own purpose. In the case of *Thayarammal* (supra) it held by the Supreme Court as under:

> "16. A religious endowment does not create title in respect of the property dedicated in anybody's favour. A property dedicated for religious or charitable purpose for which the owner of the property or the donor has indicated no administrator or manager becomes res nullius which the learned author in the book (supra) explains as property belonging to nobody. Such as property dedicated for general public use is itself raised to the category of a juristic person. Learned author at P.35 of his commentary explains how such a property vests in the property itself as a juristic persons. In *Manohar Ganesh Tambekar Vs. Laksmiram Govindram* it is held that:
>
> "The Hindu law, like the Roman law and those derived from it, recognises, not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the juridical persons or subjects called foundations"
>
> The religious institutions like mutts and other establishments obviously answer to the description of foundations in Roman law. The idea is the same, namely, when property is dedicated for a particular purpose, the property itself upon which the purpose is impressed, is raised to the category of a juristic person so that the property which is dedicated would vest in the person so created. And so it has been held in *Krishna Singh Vs. Mathura Ahir* that a mutt is under the Hindu law a juristic person in the same manner as a temple where an idol is installed".

8. In case of *Kalanka Devi Sanshthan* (supra), Supreme Court has held that when property is given absolutely for the worship of an idol it vests in the idol itself as a juristic person. The properties of the trust in law vest in the trustee whereas in the case of an idol or a Sansthan they do not vest in the manager or the Shebait. It is the deity or the Sansthan which owns and holds the properties. It is only the possession and the management which vest in the manager. When the land is donated to the deity and recorded in the name of Mandir and admittedly when idol is capable of holding the property in the same way as a natural person then certainly property belongs to idol who is having judicial status with the power of suing and being sued.

9. In LPA No.33/94 *(Shrikrishna Ramcharan Brahmin Vs. State of Madhya Pradesh and others)*, decided on 27-07-1995, the Division Bench has held that

by an executive order the name of the Collector can not be recorded as manager and name of Pujari can not be removed and those orders were quashed.

10. In case of *Ghanshyam Das* (supra), the Division Bench of this Court held that Pujari is not Maurusi Kashtkar. If the land is Muafi land, Pujari had no right of Maurusi Kashtkar. In this case the rights of Pujaris were considered and it was held that Pujari is having limited right to perform Pooja -Archana. He can also cultivate the land or get it cultivated through servants but certainly Pujari has no right to alienate the property of the temple. It was further held that Pujari can be removed if he does not render proper service and the right of inheritance of Pujari is subject to competence to work as Pujari. It is not automatic. If Pujari is not capable to work, he can be removed. No Pujari or trustees or manager can claim the title of the religious property, the property always belongs to temple i.e. deity. The Division Bench also considered the decision in the case of *Rameshchandra Vs. Janki Ballabhji,* AIR 1970 SC 532, in which it was held that Pujari claiming proprietary rights amounts to mismanagement and is not fit to remain in possession or to continue as Pujari. It was further held that the executive instruction issued by the Government is in the interest of the deity and to avoid wastage or misuse of the property of the temple. Even if the name of Pujari is recorded in column No.12 of the Khasra, he will not be owner but will continue as Pujari and it will not affect the rights of Pujari so long as he is performing his functions properly and cultivating the land or getting the land cultivated through servants. It was further held that the Government is always having right to issue directions or preparing the norms for preserving the property of deity. In case of *Mandir Shri Khande Rao* (supra), Division Bench has held that the agricultural holdings belonging to deity, State can not order auction, even if the conditions of this regulation are not satisfied. The agricultural holdings vesting in deity - State should frame rules/regulations for proper management of such property in the interest of deity and public.

11. I have considered the submission made by the learned counsel for the parties, in the background of aforesaid factual and legal aspect of the matter. It is true that to some extent the judgments of both the Courts below are also not correct. The trial Court has committed an illegality in absolutely decreeing the suit in toto without considering the various legal aspects of the matter. The lower appellate Court has also not considered the aforesaid decisions as well as the gift deed executed by owner of the land in favour of deity. In case of *Sadashiv Giri and others Vs. Commissioner, Ujjain and others,* reported in 1985 RN 317 and *Ganesh Giri Pujari Vs. Commissioner, Gwalior and others,* reported in 1994, RN 128, Division Bench has held that if the private temple is not covered by the provisions of Public Trust Act, the person claiming bhumi swami rights over the land belonging to a public temple, can not be evicted without giving an opportunity of hearing, even if Government alleges him to be

trespasser. Therefore, in this case Division Bench has held that notice is necessary before taking action. In the case of *Ganesh Giri* (Supra) Court has held that the position of Pujari is as of manager of the temple under the control of Aukaf Department, Muafi land is unoccupied land and he also can not be dispossessed by directing auction without affording opportunity of hearing to him. The reliance is placed on the decision reported in 1992, SC 1239 *(Mst. Kanchaniya and others Vs. Shivram and others).*

12. At this stage Shri B.I. Mehta, learned counsel for the appellants submits that he has no objection if the direction is given to the State to register a public trust over the land. He also submits that Commissioner and President of Aukaf Board Trust has issued the circular dated 07-08-1995, in which they have given the right up to 10 acres to the Pujari and certain policy decisions were also taken subsequently by issuing a direction separately by the commissioner, Ujjain dated 25-06-1979 and by the State Government, Department of Religious Trust and Dharmasva Vibhag to follow executive instructions and supervise the land.

13. Learned counsel for the parties have not produced any statutory rules framed by the State Government uptil now in this matter whereas thousand of cases are pending in the Court in which the rights of Pujaris are involved or Pujaris are claiming rights over the temple property. It is also experienced that the property which is recorded in the name of deity is not being maintained properly. The Division Bench in case of *Ghanshyam Das* (supra) has held that the Government in the interest of deity and to avoid wastage and misuse of the property of the temple can issue executive instructions and may frame rules.

14. In this case a suggestion has come from the side of appellants that to remove executive burden of the collector, to look after the management of all these private temples, State Government should also consider for creation of public trust over the private temple properties situated in the State of Madhya Pradesh and in the name of deity, which can be managed by the devotees and Government may also keep their representative in the trust and temple property may be regulated by the Trust.

15. In this case, it is clear that the property is recorded in the name of deity, as such, the action of Collector up to that extent was justified. In the light of the aforesaid discussion, I do not think that any interference is called for in the judgment of the lower appellate Court. So far as the rights of Pujaris are concerned, since in the gift deed rights have been given to the Pujaris to use the property, it is held that land shall be managed by Pujari under supervision of the Collector and income of the property of deity shall be spent first on Pooja -Archana of the deity and thereafter, some part of the money shall be spent on the maintenance and development of the temple and thereafter, Collector will ensure that at least 25% of the income should be given to the Pujari or his heirs, so that as per document Ex-P/3 Pujari may also get some money for his maintenance and for

maintenance of his family as was the desire of the executor of the will (Ex-P/3). However, it is made clear that Pujari will not have any ownership rights in the property and will also have no right to alienate or to transfer the property but will get fruits of the income. Government is also directed to consider the question of registration of public trust on the property of the temple for its proper management in future.

16. With the aforesaid direction, this appeal is partly allowed and is partly dismissed. Parties shall bear their own costs.

Appeal partly allowed.

I.L.R. [2008] M. P., 3207
APPELLATE CIVIL
Before Mr. Justice Abhay Gohil
31 March, 2008*

GENDALAL (SINCE DEAD) THROUGH
L.Rs. SAJJANBAI ETC. & anr. ... Appellants
Vs.
PANNALAL (SINCE DEAD) THROUGH L.Rs.
LILABAI ETC. & anr. ... Respondents

A. Transfer of Property Act (4 of 1882), Section 58(c) - *Mortgage - Execution of sale deed during minority of plaintiffs - Allegation of fraudulently execution of sale deed under the pretext of mortgage - On objection being raised, defendants executed separate agreement declaring that land has been mortgaged and after payment of consideration they will handover the possession - The two courts below found the sale deed void as it was intended to create security for loan transaction - Second appeal - Held - There is no evidence on record that subsequent agreement was based on fraud - Consideration of both documents together would constitute mortgage - Considering of price of land and minority of plaintiffs the sale deed is a sham transaction created as security of loan transaction.* (Paras 7 & 8)

क. सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 58(सी) – बंधक – वादियों की अवयस्कता के दौरान विक्रयपत्र का निष्पादन – बंधक के बहाने कपटपूर्वक विक्रयपत्र के निष्पादन का अभिकथन – आपत्ति करने पर प्रतिवादियों ने यह घोषित करते हुए पृथक अनुबंध पत्र निष्पादित किया कि भूमि बंधक की गई है और प्रतिफल का संदाय करने के बाद वे कब्जा सौंप देंगे – दोनों अधीनस्थ न्यायालयों ने विक्रयपत्र शून्य पाया क्योंकि उसका आशय ऋण संव्यवहार के लिए प्रतिभूति सृष्ट करना था – द्वितीय अपील – अभिनिर्धारित – अभिलेख पर कोई साक्ष्य नही कि पश्चात्वर्ती अनुबन्ध कपट पर आधारित था – दोनों दस्तावेजों पर एक साथ विचार बंधक गठित करेगा – भूमि का प्रतिफल और वादियों की अवयस्कता पर विचार करने पर विक्रयपत्र नाममात्र का संव्यवहार है जो ऋण संव्यवहार की प्रतिभूति के रूप में सृष्ट किया गया था।

*S.A. No.113/1994 (Indore)

B. Civil Procedure Code (5 of 1908), Section 100 - *Finding of both the courts that plaintiffs were minor at the time of execution of sale deed is the finding of fact and such a finding cannot be disturbed in second appeal without formulating the substantial question of law.* (Para 7)

ख. **सिविल प्रक्रिया संहिता (1908 का 5), धारा 100** – दोनों अधीनस्थ न्यायालयों का निष्कर्ष कि विक्रयपत्र के निष्पादन के समय वादीगण अवयस्क थे – तथ्य का निष्कर्ष है और ऐसे निष्कर्ष में द्वितीय अपील में विधि का सारवान प्रश्न विनिर्मित किये बिना हस्तक्षेप नही किया जा सकता।

C. Civil Procedure Code (5 of 1908), Section 100 - ***Scope of interference in second appeal*** - *Both the courts below have concurrently held that agreement declaring that land has been mortgaged was executed by the defendants - It is finding of fact - There is no material to hold that it is a perverse finding - Cannot be interefered in second appeal.* (Para 7)

ग. **सिविल प्रक्रिया संहिता (1908 का 5), धारा 100** – **द्वितीय अपील में हस्तक्षेप का क्षेत्र** – दोनों अधीनस्थ न्यायालयों ने समवर्ती रूप से अभिनिर्धारित किया कि प्रतिवादियों ने यह घोषित करते हुए कि भूमि बंधक की गई है अनुबंध निष्पादित किया – यह तथ्य का निष्कर्ष है – यह अभिनिर्धारित करने के लिए कोई सामग्री नही है कि निष्कर्ष अनुचित है – द्वितीय अपील में हस्तक्षेप नही किया जा सकता।

Cases referred :

AIR 1954 SC 345, (2000) 3 SCC 536, (2006) 4 SCC 432, AIR 1982 SC 20, AIR 1980 SC 1074, 1998(1) JLJ 1, AIR 2006 SC 623, 1972 JLJ 632.

G.M. Chhapekar, for the appellants.

B.L. Pavecha, for the respondents.

J U D G M E N T

Abhay Gohil, J. :–This Second Appeal filed under Section 100 of CPC was admitted on the following substantial questions of law :-

"1 Whether the transaction embodied in Ex.D-1 is a sale or a mortgage ?

2. Whether the finding of the Court below on the questions relating to the proof of practice of fraud on the plaintiffs by the defendants and the execution of Ex.P/1 by them, wrong and perverse?"

2. Brief facts of the case are that the respondent/plaintiff filed a suit for redemption of mortgage, possession and for declaration that the sale deed dt. 31.3.1960 be declared as void. The suit of the plaintiff in brief was that the suit land situated at village Kapasthal bearing survey No.327, 406, 764, 799, 809, 812 ad measuring 6.605 hect. was the land of joint Hindu family and their father Chunnilal was the owner of the land. In the year 1957 Chunnilal died and mother was also not alive. At that time, both the plaintiffs were minor and one Rama Balai was performing the agricultural operations on their behalf. Plaintiffs were

residing alongwith their grandfather Laxmi Prasad. It was their case that the respondents were co-caste fellows. They took them into confidence and got a mortgage deed executed for a consideration of Rs.1000/-. Mortgage deed was got registered. At that time plaintiffs were very small children. Subsequently, they came to know that instead of getting the mortgage deed executed, the defendants got the sale deed executed from the plaintiffs fraudulently under the pretext of mortgage and thereafter when some objections were taken, respondents executed one agreement dt. 15.2.1961 declaring therein that the land has been mortgaged and whenever plaintiffs will pay Rs.1000/- they will leave the possession. Thereafter plaintiffs on several occasions tried to pay the amount and demanded possession, but it was denied. Subsequently a notice was issued and thereafter the suit was filed.

3. In the written statement, the defence of the defendants was that on 31.3.1960 absolute sale deed was executed after payment of full consideration. The sale deed was executed voluntarily and plaintiffs were not minor. The land was never mortgaged and nor any agreement was written by them. Agreement dated 15.2.1961 is a forged document. Suit is barred by time and since the record of rights have not been challenged, therefore, the suit is also barred on the principle of resjudicata. Issues were framed, evidence of parties was recorded and ultimately trial court decreed the suit in favour of respondent/plaintiff holding therein that the sale deed dt. 31.6.1960 was got executed fraudulently. It was also held that at the time of execution of sale deed, the plaintiffs were minor. Attempt was made to show them as major. The sale deed is void and liable to be set aside and the agreement dt. 15.2.1961 was validly executed, which made the transaction as mortgage and towards security of payment of money and the transaction is not of sale, but is of mortgage and declared the sale deed as illegal and void and decreed the suit for redemption of mortgage and possession.

4. Against the aforesaid judgment and decree dt. 29th November 1983 passed by the trial court, the appellant/defendant filed First Appeal which was also heard and decided vide judgment dt. 22nd April 1994 and the lower appellate court also affirmed the judgment and decree granted by the trial court, against which the appellants have filed this Second Appeal, which was admitted on the aforesaid substantial questions of law.

5. Shri J.M.Chhapekar, learned counsel for the appellant argued and submitted that under Section 58 (c) of the Transfer of Property Act, unless the condition of repurchase is embodied in the same document the transaction is not mortgage and placed reliance on the decision in the case of *Chunchun Jha Vs. Ebadat Ali* (AIR 1954 SC 345). Shri Chhapekar also placed reliance on a decision in the case of *Mushir Mohammeb Khan (dead) by Lrs. Vs. Sajeda Bano (Smt.) and others* [(2000) 3 SCC 536], in which the Supreme Court has held that where parties executed more than one documents, true nature of the transaction has to be

ascertained having regard to all the documents. In this case it was also held that though the suit for redemption was liable to be dismissed, however having regard to the recent tendency of entering into such transaction to deprive the debtor of his right of redemption and the fact that the sale price did not represent true market value of the property, in order to do complete justice between the parties, defendant directed to pay Rs.2 lakhs within 3 months failing which suit for redemption would stand dismissed with costs and the order was passed under Article 142 of the Constitution of India. He further placed reliance in the case of *Bishwanath Prasad Singh Vs. Rajendra Prasad and another* [(2006) 4 SCC 432], in which Supreme Court held that mortgage by conditional sale must be evidenced by one document, though a sale with a condition for retransfer/ reconveyance may be evidence by more than one document and therefore the transaction was held to be a sale deed and not a mortgage deed. Shri Chhapekar further submitted that the finding recorded by the court below are totally perverse. The transaction was a complete sale and no condition of retransfer is mentioned in the sale deed and the finding of the court about the agreement dated 15.2.19961 (Ex.P/1), which is an agreement, treating the aforesaid sale as mortgage is contrary to law and liable to be set aside. Ex.D/1 sale deed is a complete sale deed and both the courts below have wrongly considered the law and facts. It was also submitted that in both the sale deeds on record Ex.D/1 and D/2, the age of Pannalal is mentioned as 30 and age of Jivanlal is between 19 to 20 years, mother Kesharbai was alive at the time of sale and they were not minors. There are material contradictions in the statement of plaintiffs and their witnesses. The suit was filed after 21 years and there is no evidence on record about the fraud and the intention of the parties was that it was the transaction of sale.

6. Per contra, Shri B.L.Pavecha, learned counsel for the respondents submitted that no substantial question of law is involved in this appeal. Both the courts have consistently held that the sale deed Ex.D/1 was sham and bogus as it was intended to create a security for a loan transaction and was not intended to operate as a sale deed. Therefore, both the courts have not committed any illegality in recording the finding. It was submitted that the transfer is not hit by proviso to Section 58 (c) of the Transfer of Property Act, 1882 or by the decisions relied upon by the appellants in the case of *Chunchun Jha (supra) and Vishwanath Prasad* (supra). He placed reliance on a decision in the case of *Gangabai Vs. Smt. Chhabubai* (AIR 1982 SC 20), in which it was held that sub.section (1) of Section 92 of the Evidence Act is not attracted when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is a sham. Such a question arises when the party asserts that there was a different transaction altogether and what is recorded in the document was intended to be of no consequence whatsoever. For that purpose, oral evidence is admissible to show that the document executed was never intended to operate as a sale, but that some other agreement altogether, nor recorded in the

document, was entered into between the parties and the decision in the case of *Tyagaraja Mudaliyar v. Vedathanni,* AIR 1936 PC 70 was also considered by the Apex Court. Further reliance was placed on a decision in the case of *Smt. Indira Kaur Vs. Sheo Lal Kapoor* (AIR 1988 SC 1074), in which it was held that Sale deed and contemporaneous agreement to resale property for same sum executed between parties. The transaction in question was mortgage. The Supreme Court also considered the increasing tendency of entering into such transaction in order to deprive the debtor of his right of redemption within the prescribed period of limitation and it was held that the transaction in question was one of mortgage in essence and substance though it was clothed in the garb of a transaction of ostensible sale. He placed reliance on the decision in the case of *Gulab Chand (dead) by Lrs. Vs. Babulal (dead) by Lrs.* [1998 (1) JLJ 1], in which Hon'ble Apex Court has held that three documents i.e. sale deed, rent note and agreement to repurchase executed on same day, transaction is mortgage. Separate transaction may form a single transaction. No hard and fast rule can be laid down. It was further held that relationship of landlord and tenant not established, only transaction of mortgage created between the parties. It was further held that suit for eviction is not maintainable and the court should judge the real intention and purpose in the facts of each case in the context of the intention of the parties and language in which it is couched.

In the case of *Ramlal Vs. Phagua* (AIR 2006 SC 623), the Supreme Court has held that in addition to sale deed, agreement also entered into between parties simultaneously for execution of re-conveyance deed in favour of vendor. Admission to that effect given by buyer. Mere mutation of name of buyer on alleged failure of repayment of amount, would not confer any right, title or interest in her favour in absence of real transaction of property and subsequent purchasers would also get no right, title or interest in property.

In the case of *Mandas Vs. Manbai* (1972 JLJ 632), Division Bench of this court has held that if there was a stipulation between the parties that the contract would not be enforced or that it would not be acted upon being ab initio, oral evidence in support of such a plea may be given. It was further held that oral evidence is admissible to show that an agreement was only a sham or nominal transaction and was not intended to be acted upon. If the plea is that the sale was merely fictitious, such plea is not barred by the proviso to Section 58 (c) of the Transfer of Property Act and when sale deed is fictitious, no right accrues under such sale deed.

The decision in the case of *Draupadi Bai (Smt.) v. Nathu Singh* [2004 (1) JLJ 427 was also cited to show that Single Bench has also held that when sale deed executed as security for loan, deed of reconveyance also executed by purchaser, seller also remained in possession and paid the loan with interest the intention of the parties was that the sale deed was not to be acted upon. Another

decision in the case of *Smt. Munnibai & Ors. Vs. Barelal Lodhi & Ors.* [2007 (III) MPJR 65 was cited in which the Single Bench of the High Court of M.P. held that oral evidence is admissible to establish that the sale deed was sham transaction and was got executed to ensure repayment of loan.

7. Having heard the learned counsel for the parties, I have given my anxcious consideration to the reasoning assigned by both the courts below. The finding of both the courts that the plaintiffs were minor at the time of execution of sale deed dt. 31.3.1960 is the finding of fact and such a finding can not be disturbed in Second Appeal without formulating the substantial question of law. Admittedly, in this case sale deed was executed on 31.3.1960 and around after 11 months on 15.2.1961 an agreement (Ex.P/1) was also executed by the appellants, in which it was declared that the aforesaid land was obtained on rent and a sum of Rs.1,000/- was paid as security of loan and they will also pay the profit of 2 Ghadi Bigha and will retain the possession till the amount shall not be paid in lump sum and on receiving Rs.1000/-, will leave the possession and they will also execute the mortgage deed at Sardarpur. Both the courts below have concurrently held that this document was executed by appellants/defendants, which is also finding of fact and there is no material to hold that it is a perverse finding. From the language of both documents it is clear that sale deed Ex.D/1 was a sham document and subsequently it was declared in so many words that it was intended to create security for loan transaction and was not intended to operate as a sale deed. When both the courts below have concurrently held that the agreement (Ex.P/1) was validly executed, then as held by the Supreme Court in case of *Smt. Indra Kaur* (supra) the transaction in question was one of mortgage in essence and substance though it was clothed in the garb of a transaction of ostensible sale. Again in the case of *Gulab Chand* (supra), Supreme Court has held that three documents i.e. sale deed rent note and agreement to repurchase executed on same day, transaction is mortgage.

8. Thus, in view of the aforesaid discussion and considering the factual aspects as well as legal position on record that concurrent finding recorded by both the courts below, it is held that the document Ex.D/1 sale deed is document of sham transaction of ostensible sale and transaction in question was one of the mortgage in essence and substance. It is further held that from the document Ex.P/1 it is clear that the sale deed was never intended to be acted upon and reading together both the documents, true nature of transaction has to be ascertained. Considering the price and the age of the respondents/plaintiffs, it can not be held that proper price was paid as per the market value of the property and on consideration of the two documents read together would constitute mortgage, as Ex.P/1 was executed by the defendants and there was no evidence on record that it was based on any fraud. Thus, the aforesaid substantial questions of law are answered accordingly. It is held that amount of Rs.1000/- which was paid, was of loan amount and the

amount was given as security for that amount. Thus, no case is made out to interfere in the judgment of both the courts below. Accordingly, this appeal fails and is hereby dismissed. Parties are directed to bear their own costs.

Appeal dismissed.

I.L.R. [2008] M. P., 3213
APPELLATE CIVIL
Before Mr. Justice S. Samvatsar & Mrs. Justice Indrani Datta
11 July, 2008*

VANDHANA GUPTA (SMT.) ... Appellant
Vs.
RAJESH GUPTA ... Respondent

Hindu Marriage Act (25 of 1955), Section 13(i-a) - *Cruelty - What amounts to - Wife levelling allegation with respect to demand of dowry, harassment, torture by husband and potency of husband - There is no evidence to draw inference about such allegation - False allegations causes grave mental agony and pain amounts to cruelty.* (Paras 15 to 18)

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(i-a) – क्रूरता की कोटि में क्या आता है – पत्नी ने पति द्वारा दहेज की मांग करने, तंग करने, यातना देने और पति के पुरुषत्व के बारे में अभिकथन किया – ऐसा कोई साक्ष्य नही कि जिससे ऐसे अभिकथन के बारे में निष्कर्ष निकाला जाए – असत्य अभिकथन गंभीर मानसिक त्रास और कष्ट कारित करते हैं जो क्रूरता की कोटि में आता है।

Cases referred :

(2002) 5 SCC 706, 2000(1) MPLJ 575, 2005 AIR SCW 163, 2007(3) MPLJ 550, AIR 1986 Raj 13.

V.K. Bhardwaj with *Anand Bhardwaj & Kamal Jain,* for the appellant.
R.D. Jain with *Sanjay Dwivedi,* for the respondent.

J U D G M E N T

The Judgment of the Court was delivered by **INDRANI DATTA, J. :**–Appellant/wife has filed this First Appeal under Section 19 of the Family Court Act, 1984 being aggrieved by the judgment and decree dated 21.11.2005 passed by the Family Court, Gwalior in H.M.A. No.39A/03 by which respondent's petition for divorce was allowed and petition filed by the appellant/ wife for restitution of conjugal rights, which was registered as H.M.A. No.373A/03, has been dismissed.

2. Admitted facts of the case are that marriage between the appellant and respondent has been solemnized by Hindu traditions on 4.11.1998 in Gwalior.

3. Brief facts of the case are that in case No.39A/03 filed by the respondent/

*F.A. No.7/2006 (Gwalior)

husband it is stated that after the marriage appellant's behaviour was not cooperative with the family members of the respondent. She misbehaved with respondent and his mother. She was not cooperative in household works. Appellant went to her parental house from time to time without consent of the respondent and on 18.4.1999 she went to her parental house and returned on 6.5.99 and again on 13.5.99 she went to her parental house and returned on 14.5.99. The appellant insisted the respondent for publication of her poetries and when he refused then she brought the knife from the kitchen and made effort to commit suicide. The respondent intimated about this incident to the parents of the appellant and thereafter on the same day she returned back to her parental house with her uncle Mr. Vinod Gupta. It is also alleged that the appellant used to give threatening of registration of false dowry case and after the incident of 14.5.99 on the assurance of good behaviour by the appellant's parents, the appellant returned back to respondent's house on 21.6.99. After that her behaviour was not changed and she continued to misbehave with the family members of the respondent and also started making allegations that the respondent is impotent and, therefore, respondent felt insulted and also suffered mental agony. She used to threaten respondent and his family members to involve them in criminal cases and in this way the appellant behaved cruelly with the respondent. Appellant is residing separately since 1.2.2001 at her parental house without any sufficient cause or reason and inspite of several requests and efforts being made to bring her back, she refused to come back to her matrimonial house, therefore, on the ground of cruelty and desertion divorce was sought.

4. Appellant filed written statement and denied the allegations of the application. She submitted that the behaviour of the family members of the respondent was not good with her and they used to torture and demand dowry, and the incident dated 14.5.99 is false and infact on 14.5.99 when she returned back from Dholpur after giving the examination of B.A., the respondent assaulted her and demanded a sum of Rs.50,000/- and a motorcycle and thrown her out of the house in the wearing clothes, therefore, she went to her relative's house in Gwalior. Thereafter on 6.6.99-her father alongwith some relatives namely Anil Bansal, Vinod Gupta and Vishnu Bansal went to the house of the respondent, where the father of the respondent again demanded Rs.50,000/- and motorcycle and her father agreed to pay a sum of Rs.30,000/- in two installments and on 21.9.99 her father paid Rs.10,000/- and after that on 22.9.9& she returned back to the respondent's house and on 12.11.00 her father paid Rs.20,000/- to the respondent and his father. Thereafter in January 2001 the respondent and his father and mother demanded the motorcycle and also started misbehaving with her and also restricted her to talk to anyone and by the consent of the respondent on 31.1.2001 she came back to her parent's house and thereafter her father and herself approached so many time to the respondent and his father but they never turned up to take her back and also started demanding four-wheeler. She prayed

for dismissal of the application filed by respondent/husband for divorce and prayed for restitution of conjugal rights.

5. We have heard the learned counsel and perused the record of the case.

6. Learned counsel for the appellant has challenged the finding arrived at by the Family Court on the ground that trial court has not considered the evidence adduced by the appellant properly and trial court has not taken notice of the fact that from 21.6.99 to 31.1.2001 appellant and respondent lived together and as such all acts complained be condoned as per Section 23(1)(b) of Hindu Marriage Act. Hence the impugned judgment and decree deserves to be set aside and suit filed by the appellant for restitution of conjugal right deserves to be decreed.

7. Before appreciating the evidence on record the concept of cruelty is to be clarified. The Apex Court in the case of *Parveen Mehta v. Inderjit Mehta,* (2002)5 SCC 706 held that mental cruelty is a state of mind and feelings and is therefore necessarily a matter of inference to be drawn from the facts and circumstances of the case. Proper approach requires the assessment of the cumulative effect of the attending facts and circumstances established by the evidence on record. Only then can the inference be drawn that the petitioner has been caused to suffer mental cruelty by the spouse. Similar view was expressed by Bench of this Coart in the case of *Surbhi Agrawal v. Sanjay Agrawal,* 2000(1) MPLJ 575 that cumulative effect of all acts and conduct has to be taken into consideration to find out if behaviour or erring spouse falls within ambit of cruelty.

8. In the case of *A. Jayachandra v. Aneel Kaur,* 2005 AIR SCW 163 the Hon'ble Apex Court has held that expression "cruelty" has been used in relation to human conduct or human behaviour. To constitute cruelty, conduct complained of should be grave and weighty for arriving at conclusion that petitioner spouse cannot be reasonable expected to live with other spouse.

9. In the light of above principles of law, we have to examine the evidence on record in order to determine whether case of cruelty has been established.

10. PW-1 is respondent/husband. He has deposed about appellant's cruelty. As per him the cruel behaviour of the appellant is in the following manner:-

(i) the appellant is not doing the household work.

(ii) She misbehaved with his mother and father.

(iii) She gave the threatening to him and his family members to involve them in criminal case.

(iv) She says that he is impotent person.

(v) On 14.5.99 the appellant tried to commit suicide when he refused to publish her poetries.

(vi) Appellant always insisted to go to Hotel and cinema.

Respondent stated that he Informed about the incident dated 14.5.99 to the

father of the appellant. Thereafter, her relative Vinod Gupta came and appellant went with him. After four months of this incident, appellant's father begged apology. This as intimated by the appellant's uncle to his father and then on 21.9.99 appellant came back to his house and she stayed thereunto 31.1.01 and in this period also, her behaviour was not proper. She continued quarreling and misbehaving with him and his family members and her threatening for involving them in criminal case was as usual and her cruel behaviour was also continued.

11. Similar is the statement of PW-2 and PW-3 father and mother of the respondent. They have stated that the appellant always used to misbehave with their son and family members. They also deposed about the incident of 14.5.99 when attempt of suicide was made by the appellant. They supported the version of the respondent about misbehaviour and calling the respondent as impotent by the appellant. They have also stated about quarreling, misbehaving and regarding threatening given by the appellant to register a criminal case against them. They denied the allegations about demand of dowry.

12. Appellant is DW-1. She has stated that she never misbehaved with respondent. As per her statement on 14.5.99 respondent assaulted her and called her uncle Vinod Gupta and demanded Rs.50,000/- and a motorcycle then he kicked her out asking her not to turn out in his house unless the demand is fulfilled. She has not stated in examination-in-chief about any demand of dowry by respondent and his family members from November 1990 after her marriage till 14.5.99.

13. Statement of appellant is not reliable and is self contradictory. In cross-examination she has stated that demand of dowry was made first time on 14.5.99 and in examination-in-chief she has stated that after a week of marriage, respondent harassed her with respect to demand of dowry. She has also stated that she has written some letters to her father intimating about the demand of dowry made by the respondent. No such letters have been produced on behalf of the appellant. Second point is to be noticed that there is no report about torture given to her for non-fulfillment of demand of dowry. This falsify her dowry allegation.

14. DW-2 Hari Narayan, who is father of defendant/appellant, has just reiterated the contention of the appellant about demand of dowry. Statement of this witness is not reliable. According to his statement, DW-3 Vishnu Bansal was also present at the time when he gave Rs.20,000/- towards dowry amount to respondent and his father. While DW-3 Vishnu Bansal in cross-examination in para 19 has denied that appellant's father gave Rs.20,000/- in his presence. No other witness K.K. Sharma or Vinod Gupta in whose presence the remaining amount of Rs.20,000/-is said to be given is examined on behalf of appellant. This also falsifies the dowry allegations.

15. Therefore, from the evidence led by parties there is no evidence to draw inference about demand of dowry and harassment and torture by respondent. It is

apparent that appellant has levelled false allegation of demand of dowry which cannot be established in evidence. Making such false allegations amounts to cruelty.

16. Respondent's counsel drew attention of this Court to the case of *Madhuri Aswani v. Arjundas Aswani,* 2007(3) MPLJ 550. In that case appeal was filed by wife against decree of divorce. Relation between parties were strained. It was proved that wife had levelled false allegations and demand of dowry could not be substantiated by wife and it was concluded that decree of divorce was justified in the facts and circumstances and appeal was dismissed.

17. From the evidence produced on behalf of the respondent, it is also proved that appellant used to call him impotent in the form of abuse. Evidence on this point is unrebutted in cross-examination and is supported by the statement of his parents. This is also proved that her behaviour was not proper and she used to threaten the respondent to involve in criminal case and was not doing any household work. All these acts amount to cruelty. Learned counsel for the respondent relied upon a judgment rendered in the case of *Smt. Shanti Devi v. Raghav Prakash,* AIR 1986 Rajasthan 13, in that case wife Shanti Devi levelled false allegations that her husband is impotent in the form of abuse and it was found that this statement cannot be lightly ignored as in matrimonial matters it is serious stigma on manhood and is bound to cause great mental agony and pain resulting in cruelty to husband.

18. In this way it is apparent that appellant is responsible for the mental agony of respondent and that amounts to cruelty. Thus, ground under Section 13(i-a) is made out and it is proved that appellant has treated the respondent with cruelty.

19. So far as second issue of desertion is concerned, it is apparent from the evidence that parties are living separately from 1.2.2001 and it is not proved that appellant is residing separately from matrimonial home due to harassment and torture given to her by respondent or his family members. It is proved that she was behaving cruelly with respondent and his family members and she left matrimonial house from 1.2.2001, therefore, she is responsible for living separately without any just and proper cause. She has deserted the respondent for a continuous period of not less than two years immediately after the incident of 14.5.99. Hence, this appeal is dismissed and judgment and decree of the court below is affirmed. Respondent is entitled for decree of divorce under Section 13(i-a) and 13(i-b) of Hindu Marriage Act.

Appeal dismissed.

I.L.R. [2008] M. P., 3218
APPELLATE CIVIL
Before Mr. Justice J.K. Maheshwari
12 August, 2008*

EMPLOYEES STATE INSURANCE CORPORATION ... Appellant
Vs.
JAMEELA BI & ors. ... Respondents

Employees' State Insurance Act (34 of 1948), Sections 2(8) & 51A - *Whether death arising out of and in course of employment - Employee was a driver - After coming back from service he felt difficulty in breathing, after some rest proceeded to home but on the way fell down on the road and died - Statement of doctor indicates death due to Cardio-respiratory failure - Doctor has deposed that such Cardio-respiratory failure may be possible in exceptional circumstances due to stress or strain - No evidence regarding exceptional circumstances causing stress - Held - Presumption of accident arising in course of insured person's employment can not be drawn - Dependents failed to prove employment injury out of or in course of employment - Not entitled to get benefit of ESI - Judgment passed by Labour Court set-aside - Appeal allowed.* (Paras 11 & 13)

कर्मचारी राज्य बीमा अधिनियम (1948 का 34), धाराएँ 2(8) व 51ए – क्या मृत्यु नियोजन से और नियोजन के अनुक्रम में हुई – कर्मचारी एक चालक था – सेवा से वापस आने के बाद उसे सांस लेने में तकलीफ हुई, थोड़ा आराम लेने के बाद उसने घर की ओर प्रस्थान किया किन्तु रास्ते में ही सड़क पर गिर पड़ा एवं मृत्यु हो गयी – चिकित्सक का कथन दर्शाता है कि मृत्यु कार्डियो–रेस्पाइरेटरी फेलुअर के कारण हुई – चिकित्सक ने बयान दिया कि ऐसा कार्डियो–रेस्पाइरेटरी फेलुअर आपवादिक परिस्थितियों में दबाव या तनाव के कारण भी संभव है – दवाब कारित करने वाली आपवादिक परिस्थितियों के सम्बन्ध में कोई साक्ष्य नही – अभिनिर्धारित – बीमाकृत व्यक्ति के नियोजन के अनुक्रम में दुर्घटना होने की उपधारणा नही की जा सकती – आश्रित नियोजन से या नियोजन के अनुक्रम में नियोजन क्षति होना साबित करने में असफल रहे – कर्मचारी राज्य बीमा का लाभ पाने के हकदार नही – श्रम न्यायालय द्वारा पारित निर्णय अपास्त – अपील मंजूर।

Cases referred :

AIR 2007 SC 248, (1996) 6 SCC 1, 1987 (55) FLR 772 (P & H, HC), 1999(81) FLR 122.

Vivek Sharan, for the appellant.
S.H. Moyal, for the respondent No.1 & 2.

ORDER

J.K. MAHESHWARI, J. :–This appeal is filed under Section 82 of the Employees State Insurance Act, 1948 (hereinafter referred to as Act) assailing the judgment dated 15.03.2001 passed by the Labour Court, Ujjain in Case No.

*M.A. No.815/2001 (Indore)

4/97, by which the respondents were held entitled to get the dependents benefit under the Act.

2. The case, in brief, is that one Abdul Hafeez, who was a driver in Madhya Pradesh Road Transport Corporation, Ujjain Depot was the member of Employee State Insurance Scheme (ESI) bearing membership No. 298639. On 28.08.1992, as instructed by the employer, performed his duty as driver on the vehicle at Sehore-Ujjain Road. After coming back and on surrendering the vehicle, he found some pain, difficulty in breathing and having vomiting,after some rest he proceeded to home, but on the way fell down on the road, and while shifting to hospital, he was declared dead. In view of the said facts, it was alleged before the Labour Court that the accident took place during the course of employment and being member of the Insurance Scheme, the dependents are entitled to get the benefit of ESI under the provisions of the Act. It is submitted that the deceased being member of the scheme, despite the ESI benefits have not been given, therefore, the dependents have invoked the jurisdiction of the Labour Court, by submitting the application under Section 75 of the Act.

3. A reply was filed and averred that the death of the deceased Abdul Hafeez had not taken place during employment and there is no connecting evidence to prove that when he fell down on road, he was on duty. It has also stated that the appellant is not in a position to demonstrate that strain of work causes heart attack and the said work contributed or aggravated the injury occurred in the course of employment, therefore, the application filed under Section 75 of the Employees State Insurance Act is not maintainable and liable to be rejected. It has also been averred that the deceased has died while coming back to his home due to heart fail; however; it cannot be said that accident took place during the course of employment or while he was on duty therefore, the dependents are not entitled to get any benefit.

4. Learned Labour Court in the order impugned, recorded the finding, that after surrendering the duty vehicle when the deceased was coming back to his home, there was a vomiting and later he fell down on road and because he could not have reached to his home and died on the way; however, it may be presumed that accident took place in the course of employment; and on account of the strenuous work performed by him he was died. Thus, directions were issued to extend the benefits under the ESI Act to dependents.

5. Shri Vivek Sharan, learned counsel appearing for the appellant has drawn my attention to the statement of Dr. C.M. Puranik (A.W.-3) who opined the cause of death was due to cardiac-respiratory failure. However, perusal of the statement of the doctor does not reflect any connection of injury and the accident and on account of the work done by deceased in course of employment. It does not constitute aggravation or strain causing injury, resulting into cardiac respiratory failure. In absence of any evidence to that effect, it cannot be presumed

that on account of strenuous work during duty hour the injury caused to deceased, which is contributed to death of the employee concerned. Therefore, once the legal evidence is lacking to establish the aggravated factor contributing death it cannot be held to be an employment injury caused by accident to the deceased arising out of or in the course of employment, the benefits of the Act to the dependents cannot be granted and the findings recorded by the Labour Court is without any legal evidence and liable to be set aside. In support Shri Vivek Sharan has. placed reliance on a judgment of the apex Court in the case of *Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and another* reported in AIR 2007 SC 248. Shri Sharan has further placed a reliance in the case of *Regional Director E.S.L Corporation and Another Vs. Francis De Costa and Another,* reported in (1996) 6 SCC (1) and argued that the E.S.I, benefits to the dependents of the employee may be allowed only when it is proved that the employment injury has suffered "out of' and was in course of the employment. Both the conditions must be fulfilled by adducing the evidence to claim the benefit under the Act.

6. On the other hand, Shri S.H. Moyal, learned counsel appearing for respondents No. 1 and 2, has argued with vehemence that the findings recorded by the Labour Court are based on due appreciation of evidence available on record. However, such findings of fact are not required to be interfered with, accordingly no substantial question of Law arises for determination as required under Section 82 of the Act, and the findings of fact are not required to be interfered. Shri Moyal has further relied upon Section 51-A of the Act and argued that once an accident arising in the course of employment took place and in the absence of evidence contrary, it shall be presumed that it has arisen out of that employment. Therefore, once the Court has recorded a finding in favour of respondent, it is not liable to be interfered with. Shri Moyal has drawn my attention to the statement of Dr. C.M. Puranik (AW-3) who has deposed that ordinarily due to strain the cardiac respiratory failure is not possible, but exceptionally it may happen. Therefore, the present case may fall within the exception, because after immediate resuming of the duty, he met with the heart attack. Thus, findings as recorded by the Labour Court may be presumed to be correct applying the legal presumption as specified under Section 51-A of the Act. In view of the said submissions, it is argued that the appeal filed by the appellant is liable to be dismissed.

7. After having heard the learned counsel appearing for the parties, first it is to be seen whether the death of the deceased was due to employment injury or not, and to arrive at such a conclusion any cogent legal evidence is available on record. Under Section 2(8) of the Act, the word 'employment injury' reads as under:

> "Employment injury' means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course

of his employment, being a insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India".

8. Bare reading of the said, it is apparent that if a person receives a personal injury during employment causes by an accident or the occupational disease arising out of and in the course of his employment, it is necessary for grant the ESI benefit to the dependent irrespective of the fact that the accident is contracted within or outside the territorial limits of India. In the said context the arguments advanced by Shri Moyal to draw the presumption of death against employer in the course of employment, is required to be taken note for which Section 51-A is reproduced as under:

"51-A. Presumption as to accident arising in course of employment.- For the purposes of this Act, an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment."

9. On going through the language of the aforesaid provisions, it is apparent that if an accident occurred to a person, who is in the employment, in that case, in absence of the evidence to the contrary, it may be presumed to have arisen out of that accident. Thus, in the said context, the facts and evidence leading to grant of ESI benefit to the dependents may be determinative factor to uphold or set aside the findings of the Labour Court. Simultaneously, judgment of the apex Court in the case of *Sakuntala Chandrakant* (supra) may be taken note of, which held as under :-

21. This Court in *E.S.I. Corporation* (supra) referred to with approval the decision of *Lord Wright in Dover Navigation Co: Ltd. v. Isabella Craig*, [1940 AC 190], wherein it was held :

"Nothing could be simpler than the words 'arising out of and in the course of employment'. It is clear that there two conditions to be fulfilled. What arises in the course of the employment is to be distinguished from what arises 'out of the employment'. The former words relate to time conditioned by reference to the man's service, the latter to casualty. Not every accident which occurs to a man during the time when he is on his employment - that is, directly or indirectly engaged on what he is employed to do - gives a claim to compensation, unless it also arises out of the employment. Hence the section imports a distinction which it does not define. The language is simple and unqualified."

30. Circumstances must exist to establish -that death was caused by reason of failure of heart was because of stress and strain of work. Stress and strain resulting in a sudden heart failure in a case of the present nature would not be presumed. No legal fiction therefor can be

raised. As a person suffering from a heart disease may not be aware thereof, medical opinion therefore would be of relevance. Each case, therefore, has to be considered on its own fact and no hard and fast rule can be laid down therefor.

39. Unless evidence is brought on record to elaborate that the death by way of cardiac arrest has occurred because of stress or strain, the Commissioner would not have jurisdiction to grant damages. In other words, the claimant was bound to prove jurisdictional fact before the Commissioner. Unless such jurisdictional facts are found, the Commissioner will have no jurisdiction to pass an order. It is now well-settled that for arriving at a finding of a jurisdictional fact, reference to any precedent would not be helpful as a little deviation from the fact of a decided case or an additional fact may make a lot of difference by arriving at a correct conclusion. For the said purpose, the statutory authority is required to pose unto himself the right question."

In the case of *Francis De Costa* (Supra) the Apex Court has held as under :-

"In view of the definition of "employment injury" in Section 2 (8) of the Employees State Insurance Act, in order to succeed in his claim to disablement benefit, the employee must prove that the injury he had suffered arose out of and was in the course of his employment. Both the conditions will have to be fulfilled before he could claim any benefit under the Act. The injury suffered by the respondent in the instant case did not arise in any way out of his employment. Unless it can be said that his employment began as soon as he set out for the factory from his home, it cannot be said that the injury was caused by an accident "arising out of ...his employment". A road accident may happen anywhere at any time. But such accident cannot be said to have arisen out of employment, unless it can be shown that the employee was doing some thing incidental to his employment.

By using the words "arising out of .... his employment", the legislature gave a restrictive meaning to "employment injury". The injury must be of such an extent as can be attributed to an accident or an occupational disease arising out of his employment. "Out of", in this context, must mean cause by employment. Of course, the phrase "out of" has an exclusive meaning also. If a man is described to be out of his employment, it means he is without a job. In the context of Section 2(8), the words "out of" indicate that the injury must be caused by an accident which had its origin in the employment. A mere road accident, while an employee is on his way to his place of employment cannot be said to have its origin in his employment in the factory.

The other words of limitation in sub-section (8) of Section 2 are "in the course of his employment". The dictionary meaning of the said words indicates that the accident must take place within or during the period of employment. If the employee's work-shift begins at 4.30p.m., any accident before that time will not be "in the course of his employment". The journey to the factory may have been undertaken for working at the factory at 4.30 p.m. But this journey was certainly not in the course of employment. If employment beings from the moment the employee sets out from his house for the factory, then even if the employee stumbles and falls down at the doorstep of his house the accident will have to be treated as to have taken place in the course of his employment. This interpretation leads to absurdity and has to be avoided.

If the employee meets with an accident while riding his own bicycle on the way to his place of work, it cannot be said that the accident was reasonably incidental to the employment and was in the course of his employment. The deeming provision of Section 51-C, does not come into play in this case because the employee was not traveling as a passenger in any vehicle owned or operated by or on behalf of the employer or by some other person in pursuance of an arrangement made by the employer."

10. In view of the foregoing legal position, now it has to be seen whether as per the pleading and evidence adduced by the dependents the deceased died due to employment injury suffered "out of" or in the course of employment. It has to be further seen whether the death of deceased by Cardiac arrest as occurred because of stress and strain of duty work.

11. As per the pleadings and evidence adduced by the dependents makes it amply clear that the deceased Abdul Hafeej was a driver and was in the employment of M.P. Road Transport Corporation and he was the member of E.S.I. Scheme. On 28.2.92 he was coming back from his duty from Sehore Ujjain road after surrendering duty vehicle, he found difficulty in breathing and having omitting. After some rest he has proceeded to home, but he fell down at road and while shifting to hospital he was declared dead. The postmortem report and the statements of the Doctor indicates that the death was due to Cardio-respiratory failure. The doctor has deposed in his statement that such Cardio-respiratory failure is not possible due to stress or strain in ordinary course of nature, but it may be possible in exceptional circumstance. To prove exceptional circumstances, no evidence has been laid by the dependents in this case. It is further seen that after surrendering duty vehicle without reporting to the depot Manager or In-charge regarding his ailment, he was coming back to his home. When he was on the road and coming to home he fell down and ultimately declared dead. However after surrendering the vehicle and leaving duty premises accident took place on the road, when he

was coming to the home. Such injury cannot be called to be employment injury and the period of coming back to home after surrendering the vehicle cannot be counted as 'Notional period' or duty hours. In the evidence it has also not come on record that deceased was earlier having some cardiac ailment to his knowledge, prior to the said accident. It has also not reported that he was having some stress and strain during duty hours, however, no legal evidence has been adduced by the dependents to prove the employment injury "out of" or in the course of employment. In view of the said fact presumption as specified in Section 51-A of the Act cannot be drawn in favour of the beneficiaries. In view of the foregoing discussion and in terms of the language of Section 2 (8) and 51-A as well as interpretation put forth by the Apex Court in the case of *Sakuntala Chandrakant* as well as *Francis De Kosta* (supra), I am of the view that the finding recorded by the labour Court to extend the E.S.I, benefit of death of deceased on account of accident and to grant the compensation cannot be allowed to sustain because it does not qualify the legal requirement of Section 2(8) and Section 51 (A) of the Act, and in view of the judgments of the Hon'ble Supreme Court.

12. At this stage, Shri Moyal learned counsel appearing for respondents No. 1 and 2 submits that the employees State Insurance Corporation who is employer is not suppose to take such a technical objection, once an employee and member of the Scheme died due to heart-attack. He has placed the reliance on a judgment of Punjab and Haryana High Court in the case of *Smt. Harijender Kaur and others and Employees State Insurance Corporation* (1987 (55) FLR 772 (P.& H. H.C.). However, Shri Moyal has argued that the claim of the employee should not be defeated merely for this reason. Reliance has also been placed on the judgment of *E.S.I. Corporation, Indore Vs. Smt. Siayara and Another,* reported in 1999 (81) FLR 122 and argued that the interpretation should always be in favour of the beneficiaries for whom benefit the enactments have been enacted. After hearing Shri Moyal and going through the judgment as relied upon, I am of the considered view that in the light of judgment of Apex Court in the case of Francis De Kosta as well as *Sakuntala Chandrakant* (supra) such argument is of no substance because no legal, convincing evidence is available on record to show that this accident was under the employment as discussed herein above. In view of the foregoing, the argument of Shri Moyal is rejected and the dependents are not entitled to the benefit of ESI Act due to the death of deceased in the facts and circumstances of this case.

13. In view of the forgoing discussion, I am of the considered view that respondents No. 1 and 2 have failed to establish that deceased Abdul Hafeej was died due to employment injury as specified under Section 2(8) of the Act by adducing cogent legal evidence. In such circumstances the presumption under Section 51-A of the Act cannot be drawn in favour of the employee and the finding as recorded by the Labour Court is unsustainable on facts and law. Therefore, the judgment passed by the Labour Court is liable to set aside.

14. Accordingly, the present appeal is allowed and the judgment dated 15.03.2001 passed by the Labour Court, Ujjain in case No. 4/97 ESI is set-aside. Parties are directed to bear their own costs.

Appeal allowed.

I.L.R. [2008] M. P., 3225

APPELLATE CIVIL

Before Mr. Justice S.K. Kulshrestha & Mrs. Justice Manjusha P. Namjoshi

13 August, 2008*

RASIKLAL MANIKCHAND DHARIWAL; AND
DHARIWAL INDUSTRIES LTD. ... Appellants

Vs.

M/S. M.S.S. FOOD PRODUCTS ... Respondent

A. Trade Marks Act (47 of 1999), Section 135 - *Suit for injunction and damages - Allegation of using phonetically similar mark and passing of product - Trade marks phonetically similar not seriously disputed - Ex parte decree based on large number of witnesses and exhibited documents - Offending label exploited on commercial scale in an area, the evidence with regard to actual sale is unnecessary and redundant - Held - Damages can not be awarded due to delay - Token damages awarded - However, order of injunction affirmed - Decree modified.* (Paras 15, 24, 25, 26 & 28)

क. **व्यापार चिह्न अधिनियम (1999 का 47), धारा 135** – **व्यादेश और क्षतिपूर्ति के लिए वाद** – ध्वन्यात्मक रूप से समान चिह्न का प्रयोग करने और उत्पाद के हस्तांतरण का अभिकथन – ध्वन्यात्मक रूप से समान व्यापार चिह्न गम्भीर रूप से विवादित नही किया गया – एकपक्षीय डिक्री साक्षियों की बड़ी संख्या और प्रदर्शित दस्तावेजों पर आधारित – उल्लंघनकारी लेबल का क्षेत्र में वाणिज्यक पैमाने पर शोषण किया गया, वास्तविक विक्रय से सम्बन्धित साक्ष्य अनावश्यक और व्यर्थ है – अभिनिर्धारित – विलम्ब के कारण क्षतिपूर्ति अधिनिर्णीत नही की जा सकती – नाममात्र की क्षतिपूर्ति अधिनिर्णीत की गई – तथापि व्यादेश के आदेश की पुष्टि की गई – डिक्री उपांतरित।

B. Civil Procedure Code (5 of 1908), Section 20, Trade Marks Act, 1999, Section 134 - ***Territorial jurisdiction*** - *Articles in large number found within jurisdiction of trial court - Section 138 does not override provision of Code - Cause of action having arisen within jurisdiction - Held - The trial court did not suffer from lack of jurisdiction - Suit was maintainable.* (Paras 15 to 18)

ख. **सिविल प्रक्रिया संहिता (1908 का 5), धारा 20, व्यापार चिह्न अधिनियम, 1999, धारा 134** – **क्षेत्रीय अधिकारिता** – बड़ी संख्या में वस्तुऐं विचारण न्यायालय की अधिकारिता में पायी गईं – धारा 138 संहिता के उपबंध को अधिशासित नही करती – वाद कारण अधिकारिता के भीतर उत्पन्न हुआ – अभिनिर्धारित – विचारण न्यायालय को अधिकारिता की कमी नही थी – वाद पोषणीय था।

*F.A. No.217/2007 (Indore)

C. **Civil Procedure Code (5 of 1908), Order 18 Rule 4** - *Affidavits - Despite opportunity to cross-examine - Defendants made no effort to cross-examine plaintiff's witnesses - It was not necessary in ex parte proceeding to bring the witness to the witness box merely for appearing and stepping down - Ex parte decree affirmed.* (Paras 20 & 24)

ग. **सिविल प्रक्रिया संहिता (1908 का 5). आदेश 18 नियम 4** – शपथपत्र – प्रतिपरीक्षण के अवसर के बावजूद – प्रतिवादियों ने वादी के साक्षियों का प्रतिपरीक्षण करने का कोई प्रयास नही किया – एकपक्षीय कार्यवाही में यह आवश्यक नही था कि साक्षी को केवल उपस्थित होने और चले जाने के लिए कठघरे में लाया जाए – एकपक्षीय डिक्री पुष्ट।

Cases referred :

(2005) 3 SCC 63, JT 2000 (9) SC 110, AIR 1963 SC 449, (1979) All.E.L.R. 927, AIR 2007 Bom 33, (2007) 6 SCC 1, (2006) 8 SCC 726, (1996) 5 SCC 714, AIR 1970 SC 146, AIR 1965 Bom 35, (1994) 2 SCC 448, 38 (1989) Del. L.T. 54, AIR 2007 Del 108, (2006) 9 SCC 41, AIR (34) 1947 Lahore 289, (2004) 1 SCC 702, AIR 2005 SC 3353, AIR 1964 SC 993, (1988) 3 SCC 366, (2005) 1 SCC 787.

Milind Sathe, Shekhar Bhargava with *Ankur Chawla, Hitesh Jain, Ashish Jha, Subhash Jadav* and *Vivek Dalal,* for the appellants.

P.K. Saxena, Ashok Garg with *A.P. Polekar, Sanjeev Sachdeva, Amit Bhandari, Vinod Bhagat, Geet Rizwani, Meena Chaphekar, Ghanshyam Yadav, Vivek Gautam* and *Sunil Verma,* for the respondents.

JUDGMENT

The Judgment of the Court was delivered by

S.K. KULSHRESTHA, J. :– THIS is defendants' appeal under Section 96 of the Code of Civil Procedure against the judgment and decree dated 7/3/2007, passed by the learned 1st Additional Sessions Judge, Mandleshwar (West Nimar) in Civil Suit No. 4-A/2004.

2. The suit relates to the passing off by the defendants' label having phonetic similarity i.e., "MALIKCHAND GUTKHA AND PAN MASALA" with "MANIKCHAND PAN MASALA" of the defendants (appellants). At the outset, it may be noted that it is a mammoth fight between the two business tycoons; each claiming prior user than the other of the mark in question. Several pleas have been raised but the first and foremost plea raised by the plaintiff respondent relates to an interlocutory order of temporary injunction which has acquired finality in relation -to the temporary injunction under Or. 39 R. 1 and 2 of the Code of Civil Procedure. The learned counsel for the respondent has, therefore, contended that th re having been no change, not even a full stop or comma, the u/s between the parties is no longer res Integra and, therefore, the judgment and decree impugned do not call for any interference. He has referred to certain dates to expatiate his submissions with regard to the decree having been passed on the same material as obtained at the stage of interlocutory order of temporary injunction.

3. It has been urged that on 11/5/2004, this Court directed disposal of the suit within six months, but on the matter having been carried further to the Supreme Court, by order dated 25/2/2005, the direction was reaffirmed, but from the date of the order. The case was adjourned thrice on one ground or the other. It was stated that on 10/1/2005, the matter was fixed for cross examination on 29/1/2005, but although the case was called four times on the said date, the counsel for the appellant appeared at the fag end of the day and did not cross examine the witnesses. In the above factual scenario, the case was adjourned to 2/2/2005 and thereafter to 7/2/2005 and then to 11/2/2005. On 8/2/2005 an application filed by the defendants under Section 10 of the CPC was heard and posted for 11/2/2005. By this application, the defendants sought transfer of the suit to Bombay but on 11/2/2005 again the appellant appeared at the fag end of the day at 4:20 p.m. and arguments were advanced till 6:00 p.m.. The case was adjourned to 15/2/2005 then to 21/2/2005, then to 22/2/2005 and on 22/2/2005 it was posted for cross examination of the witnesses on 28/2/2005.

4. On 28/2/2005, Mr. Rohit Gupta, Advocate, after arguing applications under Or. 7 R. 11 and Or. 7 R. 14 sought adjournment but when he was directed to cross examine the witnesses, he stated that it would not be possible for him to cross examine the witnesses and the Court may proceed in the manner it desired. It was on the basis of this statement that the case was closed with regard to the right of cross examination.

5. On 17/3/2005, the case was Fixed for remaining evidence but since appellant did not appear, after hearing final arguments, the case was closed for judgment. It was in this background that the judgment and decree were passed ex-parte. All these dates have been placed on record to appreciate the arguments of the learned counsel for the plaintiffs that not even a full stop or comma was changed after the judgment of the Supreme court in relation to the temporary injunction passed in *Dhariwal Industries Ltd., and another Vs. M.S.S. Food Products* (2005) 3 SCC 63.

6. Before embarking upon consideration of other contentions of the parties in this appeal, it would be apposite to refer to the judgment in *Dhariwal Industries Ltd.*, (supra). After considering the factual matrix of the case, the apex Court held that prima facie it appeared that the mark "MALIKCHAND" was being used, though not much publicised by the original user leading to the alleged acquisition of right to use the mark by the plaintiff. This aspect has not undergone any change whatsoever till the impugned decree was passed. It has also been urged that the defendants appear to have started the use of mark "MANIKCHAND" on a large scale at a subsequent point of time. It was observed that as noticed by the High Court, both the sides introduced their respective mark for some time and the litigation arose when the defendants approached the High Court of Bombay seeking to prevent the use of "MALIKCHAND" by suing who

they thought was the proprietor of the business. The relevant discussion contained in paragraph 12 of the Supreme Court reads as follows :

> 12. Prima facie, it appears to us that the mark "Malikchand" was being used, though not much publicized by the original user, leading to the alleged acquisition of the right to use the mark by the plaintiff. The defendants appear to have started the use of the mark "Manikchand" in a large scale at a subsequent point of time. As noticed by the High Court, both sides have used their respective marks for some time. The litigation arose when the defendants herein approached the High Court of Bombay seeking to prevent the use of the mark "Malikchand" by suing what they though was the proprietor of the business. It was then that the present plaintiff came forward with the suit seeking an injunction against the user of the mark "Manikchand" by the defendants. To some extent it may be possible to conceive that the present suit by the plaintiff was a counter-blast to the suit filed by the defendants in the High Court of Bombay; but at the same time, the point made by the High Court that the plaintiff probably was apprehensive of its mark being annihilated, had approached the trial Court for relief based on its prior user of the mark. It was in this context that the High Court took the view that the application for interim injunction could not be rejected on the ground of delay and laches. We also feel, that we cannot completely brush aside the argument of counsel for the plaintiff, that the case of delay and laches has not been properly projected on behalf of the .defendants in their pleadings either in the trial Court or in the appellate court, though no doubt that aspect has been projected seriously before us by learned counsel for the defendants and to some extent is covered by the pleadings in the written statement.

7. From the above discussion it is clear that Court was satisfied that there was prima facie case in favour of the plaintiff and irreparable harm would have been caused to him had the said interlocutory order (temporary injunction) not been passed. It also depicts that the balance of convenience even at that stage was in favour of the plaintiffs. The Court has further ruled in paragraph 14 and 15 as follows:

> 14. In the broader context of this case, we cannot also ignore what has been noticed by the High Court in its order. The High Court has noticed that a number of cases under the Prevention of Food Adulteration Act have been registered against the defendants on the basis of alleged adulteration of the products marketed by the defendants. Even otherwise it is stated, that Gutakha and Pan Masala that are marketed are harmful to health. If they are harmful as claimed, what would be the consequence, when they are adulterated, is an

aspect that requires anxious consideration by the authorities concerned. The State cannot ignore the mandate of Article 47 of the Constitution. Any way, that aspect is referred to us only for the purpose of reinforcing the conclusion that ultimately, in the exercise of discretion by this Court, it may not be necessary to interfere with the order of interim injunction granted by the courts below. 15. Thus, on the whole, we are satisfied that the courts below cannot be said to have erred in thinking that the balance of convenience was in favour of the grant of interim injunction in favour of the plaintiff. In any event, we are satisfied that a case for interference under 136 of the Constitution of India is not made out in this case. We, therefore, decline to interfere with the order of the High Court and dismiss this appeal. We direct the trial Court to comply with the direction of the High Court and complete the trial and disposal of the suit, in any event, within a period of six months from this date.

8. The above said judgment also takes into account the various assignment of the trade marks for the purposes of tacking on prior user of assignor. This takes into account the contention of the learned counsel for the defendants that since there was no proper assignment, it could not be said to be a case of prior user insofar as the plaintiff was concerned.

9. In the plaint it was averred that the defendant in the phonetic similarity of its product Pan Masala, Gutkha and Supari was manufacturing, packing, selling and distributing for sale the said product in the name of Manikchand which directly constituted phonetic similarity with the product of the plaintiff and, thus, the defendant was passing off the product of the defendant as that of the plaintiff and in any case the two marks created such apparent phonetic similarity that the mark of the defendant was capable of being passed off as the mark of the plaintiff who was using that mark prior to the introduction of Pan Masala and Gutkha by defendant in the name of Manikchand. The name of the plaintiffs product being Malikchand, it was phonetically and fontwise more or less identical and the goods were capable of being passed of as the product of the plaintiff which is associated with the plaintiffs goodwill and the extensive scale at which the product was being sold.

10. In tracing out the history in relation to prior user, the plaintiff averred that initially his product was being sold by Prabhudayal Choubey in the name of his father Ramprasad alias Malikchand, but in 1959 - 1960, he started selling Supari, Ayurvedic Pan Masala and Ayurvedic Medicine in the said wrapper. This business continued till April - May, 1986 and thereafter the business was transferred to his son Ashok Sharma by assignment. Ashok Sharma was selling the said product in the name of Ashok Pharmaceutical Firm till 10/04/1992 to 1996. it was assigned to Tulsi Stores Proprietor and thereafter in 1996 it was assigned to the plaintiff. The trade mark has, therefore, been since continuously in use 1959 till its

assignment to the plaintiff and thereafter till the date of filing of the suit and even now. It is in this backdrop that the respondent (plaintiff) sought relief of injunction against the appellant in re the use of the said label containing the name "Manikchand", its sale and its distribution and against their engaging in advertising these products. It was also claimed that the defendants be called upon to render account of their sale upto 15/3/2004 and damages be granted to the plaintiff.

11. The defendants filed their written statement in which they traversed the facts stated by the plaintiffs in their plaint. It was denied that the name of the father of Prabhudayal Choubey was Ramprasad alias Malikchand. It was stated that Malikchand had been coined with a view to create evidence to support a false claim. It was also stated that the Company of the respondent No. 1 being that of Hindu Undivided Family and Manikchand was the name of the father of defendant.No.3,it was under that name that the product Supari, Gutkha and Tobacco was being sold. It was also stated that the application for Registration of the Mark was made on 22/11/1966 and Registration was obtained in 1968. It is from the date of the application for registration that the defendants were carrying on business in the name of Manikchand while Prabhudayal's mark containing the name Malikchand has not ever been registered. It was also averred that the product Malikchand was never sold in the market and in this connection a Civil Suit bearing No. 575/2004 had been instituted in the Bombay High Court in which the plaintiff had appeared on 10/3/2004. It was stated that these facts were concealed by the plaintiff in the plaint and, therefore, the plaint deserved to be rejected.

12. The Court framed as many as eight issues and thereafter framed additional issues No.9 and 10. The issues and the findings recorded by the Court below when rendered in English read as follows :

(1) Whether the plaintiff started its business in the name of Malikchand in the Pan Masala, Supari, Supari Mix from the year 1959-1960 ?	YES
(2) Whether the defendants were using a similar mark Manikchand and commercially exploiting it ?	Yes, the defendant has, 'without the consent of the plaintiff, used the mark ''Malikchand" in the wrappers which are similar.
(3) Whether the defendants were using inferior product in the packets in which they were selling their product in the name of Manikchand similar to the product	Defendants have sold the product which is inferior and has, thus, caused adverse effect on the business of the plaintiff

Malikchand of the plaintiff, creating an advertising effect on the credit of the plaintiff ?	
(4) Whether the defendants were using their mark from the year 1960 and after obtaining the Registration selling their product in their mark ?	Not proved.
(5) Whether the defendants have made any unlawful gain by using the mark of the plaintiff and that the plaintiff is, therefore, entitled to the account of profits together with delivery of the infringing labels and marks for destruction or erasure ?	YES
(6)(a) Whether the suit has been valued properly ?	YES
(6)(b) Whether the plaintiff has paid proper court fees?	YES
(7) Whether the plaintiff has filed the suit on false premises and if so, whether the defendants are entitled to special costs ?	NO
(8) Relief and Costs?	As per paragraph 23 of the judgment.
ADDITIONAL ISSUES:	
(9) Whether' the plaintiffs suit is liable to be stayed under the provisions of Sec. 10 of the CPC ?	NO
(10) Whether the suit is triable by this Court ?	YES

13. Insofar as the issue No.3 is concerned, the Court has misled itself in referring to the contents of the Pouch whereas the case of passing off relates to the similarity;

visual or phonetic. Be that as it may, since the Court has also considered the similarity of name, the parties have made submissions extensively in this behalf and, therefore, a fleeting reference to the judgment cited by the parties is necessary. In view of the judgment of the Supreme Court in *Dhariwal Industries Ltd.,* (supra), the plaintiffs have referred to the decision in *Kunhayammed & Ors.. Vs. State of Kerala and another* (JT 2000 (9) SC 110) and urged that in view of the doctrine of merger and there being no subsequent change in the factual position, the decree of the trial Court has attained finality and, therefore, no further exercise is necessary to elicit whether after the affirmation of the temporary injunction there is any change to justify a different opinion. It appears that the learned counsel for the plaintiff has not properly appreciated that question of merger arises when superior Court passes an order in relation to the order / judgment / decree passed by a subordinate court. Thus, it would amount to putting a cart before the horse in contending that doctrine of merger applies in the case in hand. The reliance has been placed on the decision of the Supreme Court in *Amritdhara Pharmacy Vs. Satya Deo Gupta* (AIR 1963 SC 449) prescribing the test to ascertain whether a particular trade mark infringes the mark which is in vogue. Their Lordships were considering the similarity in "Lakshmandhara" and "Amritdhara" in coming to the conclusion that 'Lakshmandhara" was likely to deceive and confuse persons of the class who generally purchase such preparation. We may emphasise that in the case in hand also the Gutkha is not confined to elite but also to a poor section of society who may get misled by the use of "Manikchand" and "Malikchand". Reference has also been made to a decision in *Erven Warnik BV and others Vs. J. Townend & Sons (Hull) Ltd.. and others* [19791 All.E.L.R. 927 with regard to the similarity between the word "Advocaat" and 'Old English Advocaae'. In the present case, since phonetic similarity is patent, the action for passing of shall lie with greater vigour. Reference has also been made to *Bharati Cellular Ltd., & Anr. Vs. Jai Distillers P. Ltd.,* (AIR 2007 Bom. 33) where it is said that even if the two products operate in different fields, injunction in respect of such totally dissimilar case can be granted when it is shown that business of plaintiff was of such cross nation reputation and he was dealing in such large variety of products in many fields that it was likely to create confusion that the business of defendant was that of plaintiffs. It is, therefore, clear that even in relation to dissimilar product an injunction suit would lie if the business is on large scale and in diversified fields.

14. At this stage, we may pause to consider the contention of the defendant that the mark of the defendant is registered. In *Heinz Italia and another Vs. Dabur India Ltd.,* (2007) 6 SCC I, their Lordships have observed that requirement for establishing an action is the prior user for securing injunction in an action for passing off and prior registration of trade mark or similar mark, is irrelevant. Attention has also been invited to the decision of the Supreme Court in *Ramdev Food Products (T) Ltd.. Vs. Arvindbhai Rambhai Patel and others* (2006) 8

SCC 726 in respect of "Ramdev Masala", to the effect that ordinarily, under the Law, there could only be one mark, one source and one proprietor. The fact highlighted is that there cannot be two parallel marks whether selling the same goods or different goods. In this respect we may also point out that in another-decision of the Supreme Court in *N. R. Dongre and others Vs. Whirlpool Corporation and another* (1996) 5 SCC 714, the Supreme Court has ruled that where a trade mark already used by a Company was got registered by another Company through deception to obtain economic benefit of reputation by injuring goodwill and the business of the other company, passing off action by the affected party is maintainable even against the registered owner of the trade mark and the affected party is entitled to protection. Decisions in *K. R. Chinna Krishna Chettiar Vs. Sri Ambal & Co. and another* (AIR 1970 SC 146), in Consolidated *Foods Corporation Vs. Brandon and Co. Pvt. Ltd.*, (AIR 1965 Born. 35), and *M/s. Power Control Appliances and others Vs. Sumeet Machines Pvt. Ltd.*, (1994) 2 SCC 448 to the effect that acquiescence will not change the complexion as use of trade mark by rival manufacturer is not permissible and hence there is no question of any implied consent, and the judgment in *Hindustan Pencils (P) Ltd., Vs. India Stationery Products Co. and another* 38 (1989) Del.L.T. 54 to the effect that defence of inordinate delay, laches and acquiescence against the action cannot be accepted once it is shown that the mark of prior user has been impinged.

15. We have referred to the position of law, only because the cases were cited, although there was no serious debate as regards the two marks being phonetically similar.

16. Great emphasis has been laid by the defendants on the question of jurisdiction of the Court at Mandleshwar. Reference has been made to Sec. 134 of the Trade Marks Act and Sec. 20 of the Code of Civil Procedure. Learned counsel for the defendants has urged that it is only when the case is covered by the provisions of Sec. 134 of the Trade Marks Act that the provisions contained in Sec. 20 of the CPC would stand excluded but in the case of passing off, since Sec. 134 of the Trade Marks Act does not apply, the case is required to be examined in the light of Sec. 20 of the CPC and if so examined, it would become luculent, manifest and apparent that the trial Court had no jurisdiction, notwithstanding that it was alleged that the Pouches were noticed in the area of Mandleshwar District. Contention of the learned counsel for the appellant is that it is the bundle of facts that determines the jurisdiction of a particular Court. He has stated that in paragraph 15 of the plaint all that has been stated is that when the plaintiff went to Mandleshwar in relation to his other business activities, he saw the offending pouches of Pan Masala, Gutkha, Supari and Supari Mix and it was then that the cause of action accrued and continued in favour of the plaintiff. In paragraph 16, it is on this basis that it is claimed that the Court had jurisdiction. Sec. 134 of the Trade Marks Act, 1999, provides as under :-

134. Suit for infringement, etc., to be instituted before District Court. - (1)

No suit -

(a) for the infringement of a registered trade mark; or

(b) relating to any right in a registered trade mark; or

(c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiffs trade mark, whether registered or unregistered,

shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.

(2) For the purpose of clauses (a) and (b) of sub-section (1), a "District Court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

Explanation.- for the purposes of i section (2), "person" includes the registered proprietor and the registered user.

17. Sub-section (1) lays down that the suit shall be instituted in the District Court having jurisdiction to try the suit. Sub-section (2), however, makes it clear that for the purposes of infringement of registered trade mark and action relating to any right in a registered trade mark, even the District Court within the limits of whose jurisdiction at the time of the institution of the suit or other proceedings, the person instituting the suit or proceeding actually and voluntarily resides or carries on business or personally works for gain. in construing the provision, a Division Bench of Delhi High Court in *M/s. Intas Pharmaceuticals Ltd.. Vs. Allergan Inc.,* (AIR 2007 DELHI 108), has observed that the provision of Sec. 134 of the Act do not over ride the provision of Sec. 20 of the CPC, but they provide an additional forum and place for filing suit under the Act. In *Dhodha House Vs. S.K.Maingi* (2006) 9 SCC 41, the Supreme Court has ruled that lis under 1958 Act arises where the whole or a part of the cause of action arises. In paragraphs 19 and 20 of the report, it has been observed as follows:

19. Cause of action, as is well settled, is a bundle of facts which are necessary to be proved in a given case. Cause of action, it is trite, if arises within the jurisdiction of the court concerned empowers the court to entertain the matter. Determination of territorial jurisdiction of a civil court is governed by the provisions of the Code of Civil Procedure (for short "the Code"). Section 16 of the Code provides for

institution of the suits where the subject-matter of the suit is situate. Section 17 of the Code refers to the suits for immovable property within the jurisdiction of different courts. Section 18 refers to the place of institution of a suit where local limits of jurisdiction of courts are uncertain; whereas Section 19 of the Code contemplates suits for compensation for wrongs to persons o movables, Section 20 of the Code wherewith we are concerned in this case provides that the suits which do not come within the purview of Sections 16 to 19 of the Code are to be instituted where the defendants reside or cause of action arises in the following terms :

"20. Other suits to be instituted where defendants reside or cause of action arises.- Subject to the limitation aforesaid every suit shall be instituted in a court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, when there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business or personally works for gain, provided that in such case either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation.- A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

20. The jurisdiction of the District Court to determine a lis under the 1957 Act as also the 1958 Act vests in the court where the whole or a part of cause of action arises. Sub-section (2) of Section 62 of the 1957 Act provides for an additional forum therefor, in the following terms :

"62. (2) For the purpose of sub-section (1), a 'District Court having jurisdiction' shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are

more than on such persons, any of them actually and voluntarily resides or carries on business or personally works for gain."

Admittedly, no such additional forum had been created in terms of the provisions of the 1958 Act.

18. It is, therefore, clear that cause of action having arisen within the territorial jurisdiction of the District Court, Mandleshwar, the suit of the plaintiffs was maintainable and the Court did not suffer from lack of jurisdiction. In this behalf, we may also refer to the decision in *Firm Bhagwan Das Ramji Lal and another Vs. Watkins Mayor & Co.* AIR (34) 1947 Lahore 289 to the effect that passing off action lies in the Court in District where goods are sent for sale in commercial quantity. In view the position, thus, explained we are of the view that the trial Court was not lacking any jurisdiction in entertaining the suit. We may also point out that if Ss. 19 and 20 of the Code of Civil Procedure are read in juxtaposition, the illusion that in such cases the Court where the-articles have been found stored in a large number will not have jurisdiction, is far from reality.

19. We may reiterate for the purposes of the next contention of the learned counsel for the appellants with regard to the applicability of Or. 18, especially Rr. 4 and 5, that after the direction of the Supreme Court that the trial Court shall decide the case within six months, there was practically no willing participation of the defendants and the defendants always made endeavour to get the case adjourned. The dates have already been referred hereinabove, but the crucial dates in this behalf are 28/2/2005 when an application under Or. 7 R. 11 was filed and another application under Or. 7 R. 14 was submitted. It was on this date that the counsel for the appellants was asked to cross examine the witnesses but he declined to do so stating that the Court could proceed in whatever manner it wanted. The Court was, therefore, constrained to close the right of the parties to cross examine and the case was fixed on 17/3/2005. On that date the court heard arguments and closed the case for judgment.

20. The contention of the learned counsel for the appellants is that the Court committed an error in not posting the case for defence evidence and in reserving it for judgment. He has further pointed out that unless the Affidavits were taken on record under Or. 18 R. 4 of the CPC and the documents were exhibited in accordance with the proviso to Rule 4, there was no evidence before the Court for proceeding further much less decreeing the suit. Learned counsel has further submitted that even hypothetically if it is taken that the Affidavits brought on record constituted evidence, ex-parte decree could be passed only when the evidence was reliable. Mere fact that only some witnesses have been examined by the Court, will not be enough for passing an ex-parte decree. Reliance has been placed on the judgment of the Supreme Court in *Smt. Sudha Devi Vs. M. P. Narayanan and others* (1988) 3 SCC 366.

21. The record shows that Affidavit of Nitesh Wadhwani was filed on the basis

of the information received by him from Kishore Wadhwani and Ashok Sharma. He has stated that the business was commenced in the year 1959 - 60 and thereafter there was assignment Ex.P/l. This assignment was in writing. Kishore Wadhwani assigned the said mark to the deponent. Original Assignment Deed dated 01/04/1992 was lost with the result application was made to lead secondary evidence and, in fact, such secondary evidence was led. Kishore Wadhwani also filed his Affidavit to the effect that business was commenced in 1959 - 60 and it was assigned to him on 01/04/1992. Since original Deed was lost by Nitesh, permission was sought u/s. 65 of the Evidence Act to lead secondary evidence and evidence to that effect was satisfactorily led. The plaintiffs also examined Ashok Sharma son of the original proprietor in support of the assignment deed dated 01/04/1992 (Annexure P/2) bearing his signatures and that of Kishore Wadhwani. Sachin Maheshwari examined to prove the Bills etc., has referred to the correspondence on the subject. Mahendra Nagpal son of a Notary was examined to show that there was assignment vide Annexure P/2 and Padam Kumar Gupta and Mahesh Agrawal gave Affidavit with regard to the advertisement. The precise grievance of the learned counsel is that unless these Affidavits were taken on record, in accordance with R. 4 of Or. 18 and the documents were taken on record in accordance with the proviso to Rule 4, the Affidavits filed did not constitute evidence and, therefore, the claim allowed on that basis was liable to be set aside. Order 18 Rr. 4 and 5, read as follows:

> **4. Recording of evidence.-** (1) in every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:
>
> Provided that where documents are field and the parties rely upon the documents, the proof and admissibility of such documents which are filed alongwith affidavit shall be subject to the orders of the Court.
>
> (2) The evidence (cross -examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court shall be taken either by the Court or by the Commissioner appointed by it :
>
> Provided that the Court may, while appointing a commission under this sub-rule, consider taking into account such relevant factors as it thinks fit ;
>
> (3) The Court of the Commissioner as the case may be, shall record evidence either in writing or mechanically in the presence of the Judge or of the Commissioner, as the case may be, and where such evidence is recorded by the Commissioner he shall return such evidence together with his report in writing signed by him to the Court

appointing him and the .evidence taken under it shall form part of the record of the suit.

(4) The commissioner may record such remarks as it thinks material respecting the demeanour of any witness while under examination:

Provided that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments.

(5) The report of the Commissioner shall be submitted to the Court appointing the commission within sixty days from the date of issue of the commission unless the Court for reasons to be recorded in writing extends the time.

(6) The High Court or the district Judge, as the case may be, shall prepare a panel of Commissioners to record the evidence under this rule.

(7) The Court may by general or special order fix the amount to be paid as remuneration for the services of the Commissioner.

(8) The provisions of rules 16, 16-A, 17 and 18 of Order XXVI, in so far as they are applicable, shall apply to the issue, execution and return of such commission under this rule.

5. How evidence shall be taken in appealable cases.- In cases in which an appeal is allowed, the evidence of each witness shall be,-

(a) taken down in the language of the Court,-

(i) in writing by, or in the presence and under the personal direction and superintendence of, the judge, or

(ii) from the dictation of the Judge directly on a typewriter; or

(b) if the Judge, for reasons to be recorded, so directs, recorded mechanically in the language of the Court in the presence of the Judge.

22. Learned counsel has submitted that as per the decision of the Supreme Court in *Ameer Trading Corpn. Ltd., v. Shapoorji Data Processing Ltd.,* (2004) 1 SCC 702, if the Affidavits-are not brought on record under the provisions of Or. 18 R. 4, and the documents have not taken on record under the proviso to the said Rule, the document do not constitute any evidence and, therefore, they are liable to be ignored and consequently decree set aside. It seems that the argument has been advanced on misreading of the said judgment. As a matter of fact, the said judgment holds that presence of a party during examination-in-chief is not imperative when the examination-in-chief is" taken on an Affidavit and in the

event the opposite party desires to cross examine the said witness, he would be permitted to do so in the open Court. Paragraphs 33 and 34 of the report read as extracted below:

> 33. The matter may be considered from another angle. Presence of a party during examination-in-chief is not imperative. If any objection is taken to any statement made in the affidavit, as for example, that a statement has been made beyond the pleadings, such an objection can always be taken before the court in writing and in any event, the attention of the witness can always be drawn while cross - examining him. The defendant would not be prejudiced in any manner whatsoever if the examination-in-chief is taken on an affidavit and in the event he desires to cross-examine the said witness he would be permitted to do so in the open court. There may be cases where a party may not feel the necessity of cross examining a witness, examined on behalf of the other side. The time of the court would not be wasted in examining such witness in open court.
>
> (emphasis supplied)
>
> 34. Applying the aforementioned principles of interpretation of statute, we have no doubt in our mind that Order 18 Rules 4 and 5 are required to be harmoniously construed. Both the provisions are required to be given effect as to Order 18 Rule 5 cannot be read as an exception to Order 18 Rule 4.
>
> (emphasis supplied)

23. In Salem Advocate *Bar Association, Tamil Nadu Vs. Union of India* (AIR 2005 SC 3353), while upholding the constitutional validity of Or. 18 R. 4, it was observed that Court in appropriate cases can order examination-in-chief and cross-examination to be done by court. Plea that court would be deprived of benefit of watching demeanour witness cannot be a ground to defeat will of legislature Paragraph 5 of the report reads as extracted below :

> 5. The amendment provides that in every case, the examination-in-chief of a witness shall be on affidavit. The Court has already been vested with power to permit affidavits to be filed as evidence as provided in Order XIX Rules 1 and 2 of the Code. It has to be kept in view that the right of cross examination and re-examination in open court has not been disturbed by Order XVIII Rule 4 inserted by amendment. It is true that after the amendment cross-examination can be before a Commissioner but we feel that no exception can be taken in regard to the power of legislature to amend the Code and provide for the examination-in-chief to be on affidavit or cross-examination before a Commissioner. The scope of Order XVIII Rule 4 has been examined and its validity upheld in Salem Advocates

Bar Association's case. There is also no question of inadmissible documents being read into evidence merely on account of such documents being given exhibit numbers in the affidavit filed by way of examination-in-chief. Further, in Salem Advocates Bar Association's case, it has been held that the trial court in appropriate cases can permit the examination-in-chief to be recorded in the Court. Proviso to sub-rule (2) of Rule 4 of Order XVIII clearly suggests that the court has to apply its mind to the facts of the case, nature of allegations, nature of evidence and importance of the particular witness for determining whether the witness shall be examined in court or by the Commissioner appointed by it.

The power under Order XVIII Rule 4 (2) is required to be exercised with great circumspection having regard to the facts and circumstances of the case. It is not necessary to lay down hard and fast rule controlling the discretion of the court to appoint Commissioner to record cross-examination and re-examination of witnesses. The purpose would be served by noticing some illustrative cases which would serve as broad and general guidelines for the exercise of discretion. for instance, a case may involve complex question of title, complex question in partition or suits relating to partnership business or suits involving serious allegations of fraud, forgery, serious disputes as to the execution of the will etc., In such cases, as far as possible, the court may prefer to itself record the cross - examination of the material witnesses. Another contention raised is that when evidence is recorded by the Commissioner, the Court would be deprived of the benefit of watching the demeanour of witness. That may be so but, in our view, the will of the legislature, which has by amending the Code provided for recording evidence by the Commissioner for saving Court's time taken for the said purpose, cannot be defeated merely on the ground that the Court would be deprived of watching the demeanour of the witnesses. Further, as noticed above, in some cases, which are complex in nature, the prayer for recording evidence by the Commissioner may be declined by the Court. It may also be noted that Order XVIII Rule 4, specifically provides that the Commissioner may record such remarks as it thinks material in respect of the demeanour of any witness while under examination. The Court would have the benefit of the observations if made by the Commissioner.

24. We may point out that in the case in hand, the court was constrained to proceed ex-parte and despite opportunities having been offered to the counsel for the party present before the Court, no effort was made to cross examine the witnesses. Under these circumstances' especially when the opportunity to cross

examine was not availed, even otherwise, it was not necessary to bring the witnesses to the witness box merely for appearing and stepping down.

25. Learned counsel has also referred to the conduct of the respondent and pointed out that the respondent having acquiesced over several years, waived its right to challenge the mark of the defendant. Suffice would be to refer to the judgment of the Supreme Court in *M/s. Motilal Padampat Sugar Mills Co. Ltd., Vs. The State of Uttar Pradesh and others* (AIR 1979 SC 621) to the effect that waiver means abandonment of a right and it may be either express or implied from conduct, but its basic requirement is that it must be an intentional act with knowledge. There can be no waiver unless the person who is said to have waived is fully informed as to his right and with full knowledge of such right, he intentionally abandons it. In another decision, the High Court of Gujarat in *Rupa & Co. Ltd., Vs. Dawn Mills Co. Ltd.,* 1999 PTC (19) 334 has observed that there cannot be two trade marks and at the most delay in seeking action may defeat the claim to past damages and accounts but not a relief of injunction. We are in respectful agreement with the observations made in the above case. We are of the view that if two marks cannot co-exist generally, the delay can be considered as regards the award of damages but cannot defeat the prayer for injunction.

26. We have already set out the details with regard to the conduct of the defendants and non-cooperation also to the extent that when the defendants were called upon to cross examine the witnesses, their counsel withdrew stating that Court could proceed in the manner it liked. Since the case was reserved for judgment, learned counsel has submitted by reference to the decision of the Supreme Court in *Arjun Singh Vs. Mohindra Kumar and others* (AIR 1964 SC 993) that once a case is reserved for judgment. Or. 9 R. 7 does not apply. The contention that ex-parte decree must be passed on the basis of the reliable evidence, founded on the judgment of the Supreme Court in *Smt. Sudha Devi Vs. M. P. Narayanan and others* (1988) 3 SCC 366 has already been taken into consideration. Large number of witnesses have been examined and documents exhibited showing prior user of the mark by the plaintiff. Under these circumstances, it cannot be said that the judgment is not based on any admissible evidence or evidence on record. In the case of ex-parte decree, in an application under Or. 9 R. 13, the defendant may question the correctness of the order posting the case for ex-parte hearing and may contend that he had sufficient and cogent reasons for not being able to attend the hearing of the suit on the relevant date. However, these two grounds cannot be raised in a First Appeal against the ex-parte decree u/S. 96. In the First Appeal u/S. 96, the defendant on the merits of the suit can contend that the materials brought on record by the plaintiff were not sufficient for passing a decree in his favour or that the suit was not otherwise maintainable. We have referred to the submissions made by the parties and in view of the scope referred to by the Supreme Court in *Bhanu Kumar Jain Vs. Archana Kumar and another* (2005)

1 SCC 787, we find that on merits of this case also decree could have been passed. We may also record that once it is proved that a large quantity of the product has been commercially provided in a particular area, it is not necessary in a passing off action to prove that actual sale of the product has. in fact. taken place.

27. It may also be pointed out with reference to the argument of the learned counsel in re the position of law under Or. 18 R. 4 that it was not necessary much less in an ex-parte proceeding to produce the witness in dock and the documents to be taken on record under the proviso to R. 4 Or. 18. Therefore, the contention of the learned counsel that an application was filed for production of witnesses and documents in Court which was withdrawn on 17/3/2005 itself shows that the requirement stood defied, is not appealing. Once it was clear that the Court was proceeding ex-parte and in view of the judgments heretofore referred, the course adopted by the plaintiffs in not pressing the application was in tune with the requirement of law.

28. The contention of the learned counsel that there should be evidence with regard to the loss or likelihood or loss does not merit acceptance. Once it is held that it is not necessary in a passing off action to prove the actual sale when the offending label has been exploited on commercial scale in an area, the evidence with regard to the actual sale is unnecessary and redundant. Delay in absence of volume of sale at best can be pressed into service in resisting the claim for damages. We may also point out that an application was filed by the defendants to ante-date its commencement of sale from the year 1961 to 1958 but no attempt was made to pursue the matter.

29. Accordingly, though we agree with the trial Court insofar as other reliefs have been granted, the relief of account of profits / damages could not have been awarded to the plaintiffs on account of the delay caused in bringing up the action. At the most, the plaintiffs are entitled to token damages.

30. Consequently, the relief granted in paragraph 23(c) [23 (स)], is set aside and, in stead, token relief of Rs. 11.00 lacs (Rs. Eleven Lacs Only) is granted to the plaintiffs. Insofar as the injunction granted vide paragraph No.23(a) and (b) is concerned, it calls for no interference. The appeal is accordingly disposed of. The decree of the trial Court be modified accordingly. No costs.

Appeal disposed of.

I.L.R. [2008] M. P., 3243
APPELLATE CIVIL
Before Mr. Justice S.K. Seth
29 August, 2008*

SUJANMAL ... Appellant
Vs.
KAILASH CHANDRA AGARWAL ... Respondent

A. Accommodation Control Act, M.P. (41 of 1961), Sections 12(1)(a) & 13(1) - *Eviction* - *Tenant failed to pay arrears of rent even after service of writ of summons - Tenant deposited part of arrears of rent when trial was coming to a close and sought condonation of delay - Rejection by trial court - Held - Trial court rightly found that the application for condonation of delay was not bona fide - Decree of eviction u/s 12(1)(a) of Act affirmed - Appeal dismissed summarily.* (Para 6)

क. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धाराएँ 12(1)(ए) व 13(1) – बेदखली – किरायेदार समन की तामीली होने के बाद भी बकाया किराया अदा करने में असफल रहा – जब विचारण समाप्त होने को था तब किरायेदार ने आंशिक बकाया किराया जमा किया और विलम्ब की माफी चाही – विचारण न्यायालय द्वारा नामंजूर – अभिनिर्धारित – विचारण न्यायालय ने यह उचित रूप से पाया कि विलम्ब की माफी का आवेदन सद्भावी नही था – अधिनियम की धारा 12(1)(ए) के अन्तर्गत बेदखली की डिक्री पुष्ट की गई – अपील संक्षेपतः खारिज।

B. Civil Procedure Code (5 of 1908), Order 6 Rule 2 - *Pleading* - *Tenant's contention that there was a absence of precise pleading regarding non-payment of arrears of rent despite service of demand notice - Eviction decree on the ground of Section 12(1)(a) cannot be passed - Held - It is clear from plaint averments that tenant failed to pay or tender arrears of rent despite service of demand notice - Thus, parties were alive to the controversy and accordingly conducted their case - Trial court had framed issues also in this regard - Finding of trial court in respect of non-payment of arrears of rent affirmed - Appeal dismissed summarily.* (Para 6)

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 2 – अभिवचन – किरायेदार का प्रतिवाद कि माँग के सूचनापत्र की तामीली के बावजूद बकाया किराया अदा नही किया इस सम्बन्ध में सुनिश्चित अभिवचन का अभाव था – धारा 12(1)(ए) के आधार पर बेदखली की डिक्री पारित नही की जा सकती – अभिनिर्धारित – वादपत्र के प्रकथनों से स्पष्ट है कि किरायेदार माँग के सूचनापत्र की तामीली के बावजूद बकाया किराया अदा करने या निविदत्त करने में असफल रहा – इस प्रकार, पक्षकार विवाद से अवगत थे और इसी प्रकार उन्होंने उनका मामला संचालित किया – विचारण न्यायालय ने इस सम्बन्ध में विवाद्यक भी विरचित किये – विचारण न्यायालय के बकाया किराया न दिये जाने से सम्बन्धित निष्कर्ष की पुष्टि की गई – अपील संक्षेपतः खारिज।

G.M. Chaphekar with *Sandeep Kochatta,* for the appellant.

*S.A. No.111/2008 (Indore)

JUDGMENT

S.K. SETH, J. :–This is tenant's appeal from an eviction decree suffered by him concurrently under Section 12(1)(a) of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as 'the Act' for short).

2. Facts relevant for the disposal of this appeal in short are as under.

3. A shop in Jaora was let out to appellant on payment of monthly rent of Rs.351. Appellant committed defaults in payment of rent. A demand-cum-notice calling upon him to pay arrears of rent from 1.12.1999 to 30.6.2003 was served, but he failed to pay or tender demanded arrears of rent. Hence, respondent/landlord filed suit seeking eviction of the appellant from suit shop on the ground of non-payment of arrears of rent as also on the ground of bonafide need. Suit was contested by the appellant. On the basis of pleadings, trial court framed issues and allowed parties to adduce evidence.

4. It may be mentioned here that there was no dispute with regard to the rate of monthly rent being Rs. 351. On discussion of evidence on record, the trial Court, while rejecting the claim for eviction on the ground of bonafide need, found that despite service of demand notice, appellant neither tendered/paid to respondent arrears of rent nor took advantage of first limb of Section 13(1) of the Act. With the result suit was decreed under Section 12(1)(a) of the Act. These findings of the trial Court were upheld by the lower appellate Court in the appeal filed by the appellant. Hence this second appeal which is confined only to eviction decree passed under Section 12(1)(a) of the Act.

5. Shri Chaphakar, learned senior counsel raised two-fold submissions. His first contention was that in absence of precise pleading regarding non payment of arrears of rent despite service of demand notice, provisions of Section 12(1)(a) would not be attracted to pass or sustain an eviction decree on that ground. His second submission was that Courts below failed to see that in absence of specific issue with regard to ground of eviction covered under Section 12(1)(a), no decree on that ground could be passed against the appellant.

6. After going the material available on records, we are not impressed by the submissions of Shri Chaphekar. From a bare reading of the plaint, relief of eviction was sought on two counts, viz., bonafide need and non-payment of arrears of rent. It is clear from plaint averments that appellant failed to pay or tender arrears of rent despite service of demand notice. Thus parties were alive to the controversy and accordingly conducted their case. Present is not a case where appellant was taken by surprise for want of pleading and issues. It is no doubt true that the object of pleading is to bring the parties to a trial by focusing their attention on the matter in dispute. If the parties led evidence fully knowing the case projected by each of them, one party can not make much capital out of loose wordings used in the pleading. In interpreting the pleadings, Court should avoid adopting pedantic

approach to defeat the justice on hair splitting technicalities. In such a case, it is the duty of the court to gather the true spirit behind a pleading by reading it as a whole and not as a word of art or literature. If the strict rule of pleadings of English law is enforced in muffasil courts, then it is very likely that hardly any case could pass the hurdle and reach the stage of a decision on merit. In the case on hand, sufficient pleadings were there to make appellant understand what was the plaintiff's case even if, trial Court failed to frame necessary issues. But that is not the case here. Trial Court had framed issues regarding non-payment of arrears of rent from 1.12.1999 to 30.6.2003 and based upon evidence recorded finding that appellant after service of demand notice neither complied with Section 12(1)(a) nor with Section 13(1) of the Act so as to avoid eviction under section 12(1)(a) of the Act by virtue of Section 12(3) of the Act. It is an additional protection given to tenant to ward off eviction on the ground of non-payment of arrears of rent. When a tenant commits a default in payment of arrears of rent within stipulated time, the impediment to file a suit for eviction on that ground is removed. A further protection is afforded to a tenant under Section 12(3), if he deposits or pays to landlord the entire arrears of rent within one month of service to writ of summons and continues to pay or deposit month by month a sum equivalent to rent by 15th of each succeeding month as along as eviction suit is pending. In the case in hand, appellant missed all opportunities at his peril, therefore, Courts below rightly passed an eviction decree against him. So far as deposit of arrears made on 17.2.2007 before passing of eviction decree by the trial Court is concerned, suffice it to say that the appellant took a calculated risk during the pendency of the suit and deposited part of arrears when the trial was coming to a close and sought condonation. Trial Court found that application was not bonafide and rejected the application for condonation of delay by assigning valid and cogent reasons and refused to extend the protection available under Section 12(3) read with Section 13(1) of the Act.

7. Thus, we find no merit in this appeal as it does not give rise to any question of law much less substantial question of law for admitting this appeal for final hearing. Accordingly appeal fails and is hereby dismissed summarily without any orders as to costs of this appeal. Direction regarding costs given by Courts below shall remain unaffected.

8. At this stage, learned counsel for appellant prayed that, appellant be allowed three month's time to vacate and handover possession of the suit accommodation to respondent. Shri Sunil Jain, learned counsel, on caveat for respondent readily agreed to the prayer. In view of this, it is directed that appellant shall furnish an undertaking within two weeks from the date of this Order before the trial Court that he will handover vacant possession of the suit accommodation to respondent on or before 90 days from the date of this Order and shall also continue to pay a sum equivalent to monthly rent on or before fifteenth of each succeeding month without fail. In case of default in furnishing the undertaking or payment of sum

equivalent to monthly rent on the due date, then notwithstanding this order, respondent would be free to execute the decree in accordance with law and obtain possession of suit accommodation.

9. Order accordingly.

Order accordingly.

I.L.R. [2008] M. P., 3246
APPELLATE CIVIL
Before Mr. Justice S.K. Seth
23 September, 2008*

AMARSINGH ... Appellant
Vs.
SHIV NARAYAN & anr. ... Respondents

A. Transfer of Property Act (4 of 1882), Section 53-A - *Part performance* - *To attract provisions of Section 53-A, the property must be owned by the plaintiff - There should be a written agreement to sell or transfer by the plaintiff in favour of defendant for consideration - In pursuance of that agreement, the defendant must have done something more in furtherance of the contract and he himself should be ready and willing to perform his part of the contract from the date of agreement - Appellant had failed to establish these ingredients, therefore, courts below rightly non-suited him.* (Paras 3)

क. सम्पत्ति अंतरण अधिनियम (1882 का 4), धारा 53–ए – भागिक पालन – धारा 53–ए के उपबंधों को आकृष्ट करने के लिए सम्पत्ति वादी के स्वामित्व की होना चाहिए – वादी द्वारा प्रतिवादी के हित में प्रतिफल के लिए लिखित विक्रय या अन्तरण अनुबंध होना चाहिए – अनुबन्ध के अनुसरण में प्रतिवादी को संविदा के अग्रसरण में कुछ अधिक करना चाहिए और वह स्वयं अनुबंध की तारीख से संविदा के अपने भाग का पालन करने के लिए तैयार और रजामंद होना चाहिए – अपीलार्थी इन अवयवों को स्थापित करने में असफल हो गया था, इसलिए अधीनस्थ न्यायालयों ने सही रूप से उसका वाद समाप्त कर दिया।

B. Civil Procedure Code (5 of 1908), Section 100 - *Scope for interference* - *Findings are based upon proper appreciation of evidence therefore they are binding on High Court - Court below did not consider any inadmissible evidence and as such, there is no scope for interference with such findings - Appeal dismissed summarily .* (Para 4)

ख. सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – हस्तक्षेप का क्षेत्र – निष्कर्ष साक्ष्य के उचित अधिमूल्यंन पर आधारित हैं इसलिए वे उच्च न्यायालय पर बंधनकारी हैं – अधीनस्थ न्यायालय ने किसी अग्राह्य साक्ष्य पर विचार नही किया और इसलिए ऐसे निष्कर्षों में हस्तक्षेप की कोई गुंजाइश नही है – अपील संक्षेपतः खारिज।

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*S.A. No.1037/2007 (Indore)

Cases referred :

AIR 2001 SC 965, AIR 2000 SC 426.

A.S. Garg with *Aditya Garg,* for the appellant.

O R D E R

S.K. SETH, J. :–This appeal is by the defendant against the judgment and decree dated 3.11.2007 passed by the Ist Additional District Judge, Shajapur in First Appeal No.13-A/07. By the impugned judgment and decree, Court below has affirmed the judgment and decree passed by the trial Court in favour of the plaintiff.

2. The dispute relates to 1/3rd share (hereinafter referred to a the suit property for short) of Late Munshi in agriculture survey no. 363/02, situated in village Nichma Pargana, Tehsil and District Shajapur. It is no longer in dispute that survey no. 363/02 jointly belonged to Munshi, Ambaram and Ganpat each having one-third share. It is also undisputed that late Munshi was survived by his widow Kailashbai and two daughters Naginabai and Sangitabai. Plaintiffs' case in short was that they entered into an agreement of sale on 24.4.1990 with the heirs of late Munshi for purchase of suit property. It was followed by registered sale deed dated 1.8.1990 coupled with delivery of possession and they got the suit property mutated in their name in revenue records. It was alleged that appellant Amarsingh forcefully dispossessed plaintiffs from the suit property on 15.07.1991, which led to the proceedings under Section 145 Cr.P.C. Ultimately, plaintiffs lost in the proceedings under Section 145 Cr.P.C, and direction was issued to them to hand over possession of suit property to the appellant. Hence, plaintiffs filed the suit for declaration and injunction. Subsequently, the plaint was amended and the plaintiffs also sought the relief of possession and mesne profit at the rate of Rs.12,000/- per annum. The suit was contested by the appellant. He set up an agreement of sale dated 22.5.1990 executed in his favour by Kailashbai and submitted that the subsequent sale deed in favour of the plaintiffs was void. He also denied that he forcefully dispossessed the plaintiffs from the suit land and contended that Kailashbai delivered the possession of the suit land to him pursuant to the agreement of sale. Thus, in sum and substance, the defendant raised the plea of part performance as recognized under Section 53A of the Transfer of Property Act. On the basis of the pleadings of the parties, trial Court framed issues and allowed the parties to adduce evidence. On appreciation of evidence, learned trial Court decreed the suit of the plaintiffs and granted mesne profit at the rate of Rs.5,000/- per annum instead of Rs.12,000/- as claimed from the date of the suit till the possession thereof was delivered to the plaintiffs. Being aggrieved by the judgment and decree passed by the trial Court, appellant preferred first appeal whereas plaintiffs preferred a cross appeal claiming mesne profit at the rate of Rs.12,000/- per annum. By the impugned judgment and decree, learned lower appellate Court dismissed both the appeals and maintained the judgment

and decree passed by the trial Court, hence this second appeal by the defendant as is stated hereinabove.

3. After having heard Shri A.S.Garg, learned senior counsel for the appellant and going through the record, we find that there is no merit in this appeal. Shri Garg argued that the appellant had the prior agreement of sale in his favour; therefore, by virtue of Section 53A of the Act, he was entitled to protect his possession over the suit land. It was also contended that the agreement of sale in favour of the appellant would get precedence and any subsequent instrument would not confer a valid and legal title of the suit land to the plaintiffs. We find no merit in it. The arguments of Shri Garg, runs counter to Section 53A of the Act. A bare perusal of Section 53A of the Transfer of Property reveals that in order to attract provisions of Section 53A, the property must be owned by the plaintiff. There should be a written agreement to sell or transfer by the plaintiff in favour of the defendant for consideration, and, in pursuance of that agreement, the defendant must have done something more in furtherance of the contract and he himself should be ready and willing to perform his part of the contract from the date of agreement. From the evidence available on record, it is clear that appellant had failed to establish these ingredients, therefore, courts below rightly non-suited him. In the case in hand, Courts below on appreciation of evidence have found as a finding of fact that respondents acquired a valid title by virtue of the registered sale deed in their favour.

4. In view of the foregoing discussion, we do not find any infirmity or perversity with the findings recorded by the Courts below so as to call for interference by this Court in exercise of the jurisdiction vested under Section 100 of the CPC. We are of the view that this appeal does not give rise to any question of law much less substantial question of law, which is a sine qua non for admitting a second appeal for hearing u/s 100 of the CPC. Since the findings are based upon proper appreciation of evidence, therefore, they are binding on this Court. (see *Santosh Hazari Vs. Purushottam Tiwari,* AIR 2001 SC 965). While arriving at such findings, Court below did not consider any inadmissible evidence and as such, there is no scope for interference with such findings. (see *Ishwar Das Jain Vs. Sohanlal,* AIR 2000 SC 426). Thus, we find no infirmity with the impugned judgment and decree. Appeal stands dismissed summarily without any order as to costs.

Appeal dismissed.

I.L.R. [2008] M. P., 3249
APPELLATE CIVIL
Before Mr. Justice S.K. Seth
23 September, 2008*

MADANLAL & ors. ... Appellants
Vs.
SMT. BADAMBAI ... Respondent

Partnership Act (9 of 1932), Section 69 - *Suit for dissolution of partnership firm and rendition of account - Provision barring institution of suit unless partnership firm is registered - Held - Provision not applicable in instant suit - Purpose of registration is to protect the interests of third parties and disability is confined to suits to enforce a right arising from a contract or conferred by the Act.* (Paras 8 & 10)

भागीदारी अधिनियम (1932 का 9), धारा 69 – भागीदारी फर्म के विघटन और हिसाब देने के लिए वाद – उपबंध वाद संस्थित करना वर्जित करता है जब तक भागीदारी फर्म रजिस्टर्ड न हो – अभिनिर्धारित – वर्तमान वाद में उपबंध लागू नही होता – रजिस्ट्रेशन का उद्देश्य तृतीय पक्ष के हितों की रक्षा करना है और निर्योग्यता संविदा से उद्भूत या अधिनियम द्वारा प्रदत्त अधिकार को प्रवर्तित करांने के वादों तक सीमित है।

Case referred :
(1996) 10 SCC 88.

S. Mukati, for the appellants.

O R D E R

S.K. Seth, J. :–Heard Shri Mukati learned counsel for the appellant on the question of admission.

2. Appellants are the defendants in a suit for dissolution of partnership firm and rendition of accounts filed by the respondent.

3. By the order impugned, appeal preferred by the respondent was allowed and the order of the trial Court allowing the application under Order VII Rule 11 was set aside and the civil suit filed by the respondent/plaintiff was set down for hearing.

4. The respondent filed a suit, alleging that under an agreement between the parties, a partnership firm at will was constituted wherein plaintiff as well as defendants each had 20% share. Later on, appellant No. 1 and 3 each transferred their respective share in favour of the respondent. Disputes arose between the parties; therefore, respondent filed the suit as aforesaid.

5. Appellants resisted the suit by filing written statement. During trial, they also filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of plaint basically on the ground that in absence of registration,

*S.A. No.574/2008 (Indore)

the suit of respondent was not maintainable in view of the bar created under Section 69 of the Partnership Act. Application was opposed by the respondent. Learned trial Court, however, allowed the application by order dated 30.11.2007 and rejected the plaint. Said order was challenged by the respondent in appeal, which has been allowed by the lower appellate Court and the order of the trial Court was set aside, hence this appeal as stated above.

6. Shri Mukati, learned counsel for the appellant submitted that the bar created under Section 69 of the Partnership Act is absolute, and without registration the suit filed by the respondent was not maintainable. In support of his contention he has placed reliance on the decision of the Supreme Court in the case of *Krishna Motor Service V. H.B. Ventala Kamath* reported in (1996) 10 SCC 88.

7. After having heard learned counsel for the appellants at length and going through plaint which has been produced, this Court is of the opinion that this appeal has no substance.

8. A careful analysis of section 69 of the Partnership Act shows that the section is divided in four parts. First part prevents a person from suing as a partner in a firm, either the firm or a person who is alleged to be a partner in the firm in respect of any right arising out of a contract of partnership or any other right conferred by the Act, unless the firm is registered. Second part deals with and prevents a similar suit against a third person in respect of any contract by the firm unless it is registered and it is shown that the persons suing on behalf of the firm are partners in the firm. Third part provides that above embargo would be attracted to a claim of set-off or other proceeding to enforce a right arising from a contract, but fourthly, it also carves out exceptions to the embargo in two cases, viz. (1) enforcement of any right to sue for the dissolution of the firm or for accounts of a dissolved firm or any right or power to realise the property of a dissolved firm; and (2) the power of an official assignee, receiver or Court for realisation of property of an insolvent partner. Thus, it is clear that a suit for dissolution of the firm and rendition of accounts is not barred and can be filed and perused notwithstanding absence of registration of the partnership firm. The purpose of registration firm is to protect the interests of third parties and disability is confined to suits to enforce a right arising from a contract or conferred by the Act. The non-registration of the firm does bar other classes of suit.

9. Now coming to the decision cited by the learned counsel for the appellant, suffice it to say that in that case the question for consideration was, whether a reference made to arbitrator under Section 20 of the Arbitration Act, 1940 by a partner of unregistered firm was maintainable? Answering the question in affirmative, their Lordships held that the exception engrafted in sub-section (3) exclude the restriction/prohibition and are intended to effectuate the exceptions enumerated therein.. Thus, in the opinion of this Court, reliance placed on the *Krishna Motor's* decision supra, in no way advance the case of appellants.

10. Thus, we find from a bare perusal of plaint averments, prima facie provisions of Order VII Rule 11 are not attracted to the case in hand. The present appeal, therefore, does not give rise to any question of law much less substantial question of law. Accordingly the appeal fails and is hereby dismissed summarily.

11. Before parting with the case, we may point out that we have analysed Section 69 of the Partnership Act in the context of Order VII rule 11 and the views expressed are based on reading of plaint averments to see whether it is hit by Order VII Rule 11 and as such is liable to be rejected at the threshold without trial. Observations made hereinabove are only prima facie observations and are not the findings given on the merit of the case pending before the trial Court. In this view of matter, observations made hereinabove shall not come in the way of the trial Court while adjudicating merit of the case in accordance with law.

12. In view of the foregoing discussion, appeal is dismissed summarily without any order as to costs. Order accordingly.

Appeal dismissed.

I.L.R. [2008] M. P., 3251
APPELLATE CIVIL

Before Mr. Justice A.M. Sapre & Mrs. Justice S.R. Waghmare

23 October, 2008*

UNITED INDIA INSURANCE COMPANY LTD., INDORE ... Appellant

Vs.

SMT. RAMTUBAI & ors. ... Respondents

Motor Vehicles Act (59 of 1988), Section 173, Civil Procedure Code, 1908, Order 41 Rule 22 - *Motor accident caused by rash and negligent driving by driver of mini truck - Driver was holding license to drive LMV - Held - Mini truck squarely falls in category of LMV - Driver had valid license - Insurance Company held liable - Cross-objection of claimants allowed and compensation enhanced by applying proper multiplier.*

(Paras 10, 15, 25, 35 & 44)

मोटर यान अधिनियम (1988 का 59), धारा 173, सिविल प्रक्रिया संहिता, 1908, आदेश 41 नियम 22 – मोटर दुर्घटना मिनी ट्रक के चालक द्वारा उतावले और उपेक्षापूर्ण चालन द्वारा कारित की गई – चालक हल्के मोटर यान का लायसेंस धारित किये था – अभिनिर्धारित – मिनी ट्रक पूर्ण रूप से हल्के मोटर यान की श्रेणी में आता है – चालक के पास वैध लायसेंस था – बीमा कम्पनी दायी – दावेदारों के प्रत्याक्षेप मंजूर और उचित गुणक लागू करके प्रतिकर में वृद्धि की गई।

V.P. Khare, for the appellant.
S. Patwa, for the respondent Nos.1 to 7.
Milind Phadke, for the respondent No.8.

*M.A. No.632/2006 (Indore)

JUDGMENT

The Judgment of the Court was delivered by **A.M. SAPRE, J.** :– The decision rendered in this appeal shall also govern disposal of other three connected appeals being M. A. No.631 of 2006, M.A. No.669 of 2006 and M.A. No.692 2006, because all the four appeals arise out of one impugned award and secondly, relate to same accident.

2. This is an appeal filed by Insurance Company under section 173 of the Motor Vehicles Act against an award dated 18.10.2005, passed by learned Member, Motor Accident Claims Tribunal, Jhabua in Claim Case No. 122 of 2001. The other 3 appeals referred supra are also filed by the same Insurance Company against the same award though arise in 3 different claim cases filed by claimants. By impugned award, the Tribunal has partly allowed all the four claim petitions and has accordingly, awarded compensation to every claimant for the death of persons named therein in vehicular accident.

3. So far as present appeal (M.A. No.632 of 2006) is concerned, the Tribunal has awarded a total compensation o Rs.5,41,000/- to claimants (respondents) for the death of one Parma. The respondents / claimants have filed cross objection under Order 41 Rule 22 of C.P. Code against the impugned finding seeking enhancement in the compensation awarded by Tribunal.

4. Facts of the case so far as M.A. No.632 of 2006 and the manner in which accident occurred are these.

5. On 26.02.2001, four persons by name - Tihia, Ter Singh, Parma and Par Singh were going on two bicycles on public Road from Megh Nagar to one village called Mor Dungra in Jhabua District when one Mini Truck bearing No.GJ-20-T-3018 driven by respondent no.2, owned by respondent no. 1 and Insured with the present appellant dashed to two bicycles. As a result of dash, all the four persons named above fell down from the bicycles and died on the spot, whereas one person by name Par Singh sustained injuries.

6. It is this incident which gave rise to filing of 4 claim petitions out of which these 4 appeals arise. The claim petitions were filed by respective legal representatives of three deceased persons claiming compensation for the death of their bread earner, whereas one was filed by injured seeking compensation for the injuries sustained by him.

7. In all these claim petitions, the non applicants were common namely - driver, owner and Insurer of offending vehicle (Mini Truck No.GJ-20-T-3019) which dashed these 4 persons. The main defence of Insurance Company in all the 4 claim petitions was that driver of offending vehicle namely - respondent no.2 did not have licence to drive "Heavy Motor Vehicle" (HMV) and hence, no liability on the insurance company could be fastened arising out of use of Insured vehicle. It is this issue coupled with the issue of negligence of driver and income of persons

who died in accident and nature of injuries sustained by one claimant were probed. Parties adduced evidence. By impugned award, the Tribunal held that the Insurance Company is liable to suffer the award for the claim filed by the claimants. It was held that driver of offending vehicle had licence to drive the vehicle in question. The Tribunal then determined the compensation and allowed the claim petition in part as indicated supra. It is against this award, the Insurance Company has filed appeal.

8. So two questions arise in these four appeals. Firstly, whether Tribunal was justified in holding that Insurance Company was liable to suffer the liability? In other words, the question that arises for consideration in this appeal is whether Tribunal was justified in holding that driver of offending Truck was having valid licence to drive the vehicle in question ? In the second place, the question arises for consideration is; whether Tribunal was justified in awarding a sum of Rs.5,41,000/- to claimants for the death of Parma and if not, whether any case is made out for enhancement and if so, to what extent ?

9. Coming first to the question as to whether Tribunal was right in holding that Insurance Company is liable to suffer the liability because driver of offending vehicle was having the licence, in our considered view, the Tribunal was right on facts and evidence adduced by the parties.

10. It is not in dispute that respondent no.2 was holding a licence to drive what is called "LMV " vehicles. It is also not in dispute that the. vehicle in question was LMV (Mini Truck). We are not inclined to accept the submission of learned counsel for the appellant (Insurance company) when he urged that the Truck in question was not LMV, but was Heavy Vehicle and hence, respondent No.2 (driver) was not authorized to drive HMV. This submission has no merit on facts. In the first place, there is no evidence to prove this fact. Secondly, Mini Truck squarely falls in the category of LMV and lastly, it is not a case of either "no licence", or "forged licence" but it is a case where driver was holding a licence and that too of LMV vehicles. This ending was recorded properly by the Tribunal after taking into consideration relevant documents such as, driving licence filed by parties, statement of officers of Road Transport Department examined in support of the fact of driving licence etc. We thus find no ground to reverse this finding though assailed with vehemence by learned counsel for the appellant (Insurance Company) to get over the liability and accordingly, uphold the same. In this connection, we place reliance on the decision reported in 2008 ACJ 721. It takes more or less same view on facts identical to the case.

11. Accordingly and in view of foregoing discussion, we do not find any merit in the appeal of Insurance Company. As a consequence, the appeal fails and is dismissed.

12. This takes us to the cross objection filed by respondent of M.A. No.632 of 2006. In this cross objection, the claimants / respondents have prayed for

enhancement in the compensation awarded to claimants. According to claimants, what is awarded to them is less. It should have been more.

13. It is a death case. One person by name "Parma" aged 26 years died. He was labourer working in FCI. The Tribunal held that his monthly income was Rs.3,800/-. Deducting 1/3rd and applying the multiplier of 16, the Tribunal awarded total compensation of Rs.5,41,000/-inclusive of conventional compensation.

14. We have gone through the evidence adduced by claimants. Having gone through the same, we are of the view that the only area where we can interfere in the facts of this case is applicability of multiplier. Looking to the age of deceased (26 years), in our view, the multiplier of 18 appears to be more appropriate as compared to 16 applied by the Tribunal. So far as monthly income of deceased is concerned, the same does not call. for any interference for want of adequate evidence. We thus uphold the same as it is. Similarly, we consider it just and proper to award in lump sum total sum of Rs.25,000/- towards conventional heads, such as funeral expenses, loss of love and affection, consortium, estate etc.

15. In this way, we get a sum of Rs.2,600/- for determination of dependency after deducting 1/3rd. So we get a sum of Rs.2,600/- x 12 = Rs. 31,200/-. Applying the multiplier of 18 to the said amount we get Rs.31,200/- x 18 = Rs.5,61,600/- and after adding Rs.25,000/- to the sum, the amount will come to Rs.5,61,600/- + Rs.25,000/- = Rs.5,86,600/-.

16. In other words, the claimants are held entitled for a total sum of Rs.5,86,600/- by way of compensation for the death of Parma.

17. The compensation awarded to the claimant is a just, reasonable and proper looking to the facts and circumstances of the case and taking into account the law laid down by the Supreme Court in these types of cases in relation to several heads taken note of supra with reference to evidence brought on record by the parties. Indeed in such cases, no fixed and any static formula as such is provided for determining the compensation and the same is required to be determined on the basis of totality of evidence adduced and the relevant factors which are required to be taken into consideration as mentioned supra. It is on this basis, the courts have to work out award of reasonable compensation to the claimant for the injuries sustained.

18. Learned counsel for the respondent cited some authorities for claiming enhancement. We have gone through these authorities. In our opinion and as observed supra, every case depends upon facts of each case and one can rely upon the cases for awarding compensation. Indeed taking into consideration these authorities and then applying the law so laid down to the facts of this case, we have arrived at the figure of enhanced compensation mentioned supra.

19. In this view of the matter, the cross objection succeeds and is allowed in part. Impugned award is modified to the extent indicated above. The enhanced

sum will carry interest at the rate of 6% p.a. from the date of application till realization. All other findings are upheld being not under challenge.

Counsel fees Rs.500/-, if certified.

20. This takes us to M.A. No.631 of 2006. So far as this appeal is concerned, the same is also liable to be dismissed in the light of aforesaid discussion made in M.A. No.632 of 2006, because this appeal is also filed by Insurance Company questioning the same finding which is impugned m M.A. No.632 of 2006.

21. Accordingly and in view of foregoing discussion, we do not find any merit in the appeal of Insurance Company. As a consequence, the appeal fails and is dismissed.

22. This takes us to cross objection of respondents / claimants filed in this appeal i.e. M.A. No.631 of 2006 seeking enhancement in the compensation awarded by the Tribunal.

23. It is a death case. One person by name "Tihiya" aged 27 years died. He was labourer working in FCI. The Tribunal held that his monthly income was Rs.4,000/-. Deducting 1/3rd and applying the multiplier of 16, the Tribunal awarded total compensation of Rs.5,50,400/-inclusive of conventional compensation.

24. We have gone through the evidence adduced by claimants. Having gone through the same we are of the view that the only area where we can interfere in the facts of this case is applicability of multiplier. Locking to the age of deceased (27 years), in our view, the multiplier of 18 appears to be more appropriate as compared to 16 applied by the Tribunal. So far as monthly income of deceased is concerned, the same does not call for any interference for want of adequate evidence. We thus uphold the same as it is. Similarly, we consider it just and proper to award in lump sum total sum of Rs.25,000/- towards conventional heads, such as funeral expenses, loss of love and affection, consortium, estate etc.

25. In this way, we get a sum of Rs.2,700/- for determination of dependency after deducting 1/3rd. So we get a sum of Rs.2,700/- x 12 = Rs. 32,400/-. Applying the multiplier of 18 to the said amount we get Rs.32,400/- x 18 = Rs.5,83,200/- and after adding Rs.25,000/- to the sum, the amount will come to Rs.5,83,200/- + Rs.25,000/- = Rs.6,08,200/-.

26. In other words, the claimants are held entitled for a total sum of Rs.6,08,200/- by way of compensation for the death of Tihiya.

27. The compensation award to the claimant is a just, reasonable and proper looking to the facts and circumstances of the case and taking into account the law laid down by the Supreme Court in these types of cases in relation to several heads taken note of supra with reference to evidence brought on record by the parties. Indeed in such cases, no fixed and any static formula as such is provided for determining the compensation and the same is required to be determined on the basis of totality of evidence adduced and the relevant factors which are

required to be taken into consideration as mentioned supra. It is on this basis, the courts have to work out award of reasonable compensation to the claimant for the injuries sustained.

28. Learned counsel for the respondents / claimants cited some authorities for claiming enhancement. We have gone through these authorities. In our opinion and as observed supra, every case depends upon facts of each case and one can rely upon the cases for awarding compensation. Indeed taking into consideration these authorities and then applying the law so laid down to the facts of this case, we have arrived at the figure of enhanced compensation mentioned supra.

29. In this view of the matter, the cross objection succeeds and is allowed in part. Impugned award is modified to the extent indicated above. The enhanced sum will carry interest at the rate of 6% p. a. from the date of application till realization. All other findings are upheld being not under challenge. Counsel fees Rs.500/-, if certified.

30. This takes us to M.A. No.669 of 2006. So far as this appeal is concerned, the same is also liable to be dismissed in the light of aforesaid discussion made in M.A. No.632 of 2006, because this appeal is also filed by Insurance Company questioning the same finding which is impugned in M.A. No.632 of 2006.

31. Accordingly and in view of foregoing discussion, we do not find any merit in the appeal of Insurance Company. As a consequence, the appeal fails and is dismissed.

32. This takes us to cross objection of respondents / claimants filed in this appeal i.e. M.A. No. 669 of 2006 seeking enhancement in the compensation awarded by the Tribunal.

33. It is a death case. One person by name "Ter . Singh" aged 27 years died. He was labourer working in FCI. The Tribunal held that his monthly income was Rs.4,000/-. Deducting 1/3rd and applying the multiplier of 16, the Tribunal awarded total compensation of Rs.5,65,400/-inclusive of conventional compensation.

34. We have gone through the evidence adduced by claimants. Having gone through the same, we are of the view that the only area where we can interfere in the facts of this case is applicability of multiplier. Looking to the age of deceased (27 years), in our view, the multiplier of 18 appears to be more appropriate as compared to 16 applied by the Tribunal. So far as monthly income of deceased is concerned, the same does not call for any interference for want of adequate evidence. We thus uphold the same as it is. Similarly, we consider it just and proper to award in lump sum total sum of Rs.25,000/- towards conventional heads, such as funeral expenses, loss of love and affection, consortium, estate etc.

35. In this way, we get a sum of Rs.2,700/- for determination of dependency after deducting 1/3rd. So we get a sum of Rs.2,700/- x 12 = Rs. 32,400/-. Applying the multiplier of 18 to the said amount we get Rs.32,400/- x 18 = Rs.5,83,200/-

and after adding Rs.25,000/- to the sum, the amount will come to Rs.5,83,200/- + Rs.25,000/- = Rs.6,08,200/-.

36. In other words, the claimants are held entitled for a total sum of Rs.6,08.200/- by way of compensation for the death of Ter Singh.

37. The compensation awarded to the claimant is a just, reasonable and proper looking to the facts and circumstances of the case and taking into account the law laid down by the Supreme Court in these types of cases in relation to several heads taken note of supra with reference to evidence brought on record by the parties. Indeed in such cases, no fixed and any static formula as such is provided for determining the compensation and the same is required to be determined on the basis of totality of evidence adduced and the relevant factors which are required to be taken into consideration as mentioned supra. It is on this basis, the courts have to work out award of reasonable compensation to the claimant for the injuries sustained.

38. Learned counsel for the respondent / claimant cited some authorities for claiming enhancement. We have gone through these authorities. In our opinion and as observed supra, every case depends upon facts of each case and one can rely upon the cases for awarding compensation. Indeed taking into consideration these authorities and then applying the law so laid down to the facts of this case, we have arrived at the figure of enhanced compensation mentioned supra.

39. In this view of the matter, the cross objection succeeds and is allowed in part. Impugned award is modified to the extent indicated above. The enhanced sum will carry interest at the rate of 6% p.a. from the date of application till realization. All other findings are upheld being not under challenge.

Counsel fees Rs.500/-, if certified.

40. This takes us to M.A. No.692 of 2006. So for as this appeal is concerned, the same is also liable to be dismissed in the light of aforesaid discussion made in M. A. No.632 of 2006, because this appeal is also filed by Insurance Company questioning the same finding which is impugned in M.A. No.632 of 2006.

41. Accordingly and in view of foregoing discussion, we do not find any merit in the appeal of Insurance Company. As a consequence, the appeal fails and is dismissed.

42. This takes us to the cross objection of respondents / claimants filed in this appeal i.e. M.A. No.692 of 2006 seeking enhancement in the compensation awarded by Tribunal to claimants.

43. It is a case of injury suffered by claimant - Par Singh, aged 28 years, a labourer by profession suffered injuries in his right hand. It was a fracture injury. According to claimant, he was hospitalized for undergoing operations and he actually underwent operations in hospital. According to doctor, the permanent disability is to the extent of 55%. It is according to claimant proved in evidence

also. The Claims Tpibunal on appreciating the entire evidence adduced by the claimant awarded a total compensation of Rs.62,000/- towards the injuries sustained by him, expenses incurred, disability occurred and lastly pain and suffering. It is this determination, which is impugned by the claimant, being on lower side hence, this cross objection for enhancement.

44. We have gone through the evidence adduced by the claimant on the issue of injury sustained by him. In our opinion, taking into consideration the nature of injury, the extent of damage caused in his body to the extent of 55%, partial disability occurred in the body of appellant (claimant) as a result of which he claims to be not as fit as he was prior to accident in his day today work, resulting in reducing his capacity to some extent to work, the expenditure incurred in receiving medical treatiment in actual and to be incurred in future, the future loss and mental pain / suffering suffered due to his involvement in accident and disability occurred, we consider it proper to enhance in lump sum the compensation from Rs.62,000/- to Rs.75,000/-. In other words, in our view, the claimant is held entitled for a total sum of Rs.75,000/- by way of compensation for the injuries sustained by him.

45. The compensation awarded to the claimant is a just, reasonable and proper looking to the facts and circumstances of the case and taking into account the law laid down by the Supreme Court in these types of cases in relation to several heads taken note of supra with reference to evidence brought on record by the parties. Indeed in such cases, no fixed and any static formula as such is provided for determining the compensation and the same is required to be determined on the basis of totality of evidence adduced and the relevant factors which are required to be taken into consideration as mentioned supra. It is on this basis, the courts have to work out award of reasonable compensation to the claimant for the iniuries sustained.

46. Learned counsel for the respondent/claimant cited some authorities for claiming enhancement. We have gone through these authorities. In our opinion and .as observed supra, every case depends upon facts of each case and one can rely upon the cases for awarding compensation. Indeed taking into consideration these authorities and then applying the law so laid down to the facts of this case, we have arrived at the figure of enhanced compensation mentioned supra.

47. In this view of the matter, the cross objection succeeds and is allowed in part. Impugned award is modified to the extent indicated above. The enhanced sum will carry interest at the rate of 6% p.a. from the date of application till realization. All other findings are upheld being not under challenge.

Counsel fees Rs.500/-, if certified.

Order accordingly.

I.L.R. [2008] M. P., 3259

APPELLATE CIVIL

Before Mr. Justice S. Samvatsar & Mrs. Justice Indrani Datta

17 November, 2008*

RAM BABU VAISHYA (SINCE DEAD) THROUGH L.RS. SHRIMATI NISHA RANI & ors. ... Appellants

Vs.

SCINDIA KANYA VIDYALAYA AND REGISTERED SOCIETY & anr. ... Respondents

A. **Transfer of Property Act (4 of 1882), Sections 3 & 123 - *Gift Deed - Attestation by two witnesses*** - *Plaintiff seeking title on the basis of a gift deed which is although registered but not attested by two witnesses - Held - The gift deed is not attested by any of the attesting witnesses, hence, the said deed is not a legal gift deed and does not convey any title to the plaintiff.* (Para 34)

क. **सम्पत्ति अन्तरण अधिनियम (1882 का 4), धाराएँ 3 व 123** – **दान विलेख – दो साक्षियों द्वारा अनुप्रमाणन** – वादी ने दान विलेख के आधार पर स्वत्व की मांग की जो यद्यपि रजिस्टर्ड है किन्तु दो साक्षियों द्वारा अनुप्रमाणित नही – अभिनिर्धारित – दान विलेख किसी भी साक्षी द्वारा अनुप्रमाणित नही है, इसलिए उक्त विलेख वैध दान विलेख नही है और वादी को कोई स्वत्व हस्तांतरित नही करता है।

B. **Transfer of Property Act (4 of 1882), Section 123 - *Attestation of gift deed by two witnesses - Mandatory*** - *It is true that no penalty is imposed for non-compliance of the condition of attestation of two witnesses on the gift deed - But in the absence of this condition, the gift deed itself cannot be said to be legally complete and does not convey any title in favour of the donee - When the law requires that a particular thing is to be done in a particular manner, then the same has to be done in the manner provided by law else the act is illegal - Therefore, consequence of absence of two attesting witnesses cannot be said to be directory but it is mandatory in nature.* (Para 30)

ख. **सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 123 – दो साक्षियों द्वारा दान विलेख का अनुप्रमाणन – आज्ञापक** – यह सत्य है कि दान विलेख पर दो साक्षियों के अनुप्रमाणन की शर्त के अपालन के लिए कोई शास्ती अधिरोपित नही की जाती – किन्तु इस शर्त के अभाव में, दान विलेख विधिक रूप से पूर्ण होना नही कहा जा सकता और आदाता के पक्ष में कोई स्वत्व हस्तांतरित नही करता – जब विधि की यह अपेक्षा है कि कोई विशिष्ट कार्य किसी विशिष्ट रीति से किया जाए तो वह विधि द्वारा उपबंधित रीति से ही किया जाना चाहिए अन्यथा कार्य अवैध है – इसलिए दो अनुमाणक साक्षियों के अभाव का परिणाम निदेशात्मक नही कहा जा सकता बल्कि उसकी प्रकृति आज्ञापक है।

*F.A. No.15/2006 (Gwalior)

Cases referred :

AIR 1969 SC 1147, AIR 1989 (NOC) 47, AIR 1975 Patna 140, AIR 1932 All 527, (1970) 3 SCC 802, AIR 1951 SC 469, AIR 1997 HP 48, AIR 1968 SC 1167, (2004) 1 SCC 769.

K.S. Tomar with *K.S. Kaurav,* for the appellants.
A.K. Chitley with *Ankur Mody,* for the respondent No.1.
Vivek Khedkar, G.A., for the respondent No.2.

J U D G M E N T

The Judgment of the Court was delivered by ***S. Samvatsar*, J. :–** This first appeal is filed by defendants No.1 and 2 being aggrieved by the judgment and decree dated 20th December, 2005 delivered by Special Judge (Atrocities) and First Additional District Judge to the Court of First Additional District Judge, Gwalior in Civil Suit No.22-A/03 by which the learned trial Court has decreed the suit filed by plaintiff respondent No.1 Scindiya Kanya Vidyalaya Society for declaration of title and injunction.

2. Facts of the case, briefly stated, are that the plaintiff Scindiya Kanya Vidyalaya society is a society registered under the United State of Gwalior, Indore and Malwa (Madhya Bharat) Societies Act, 1950 having its registration at No.306/56 dated 1/8/1956 having its registered office at Motimahal road, Gwalior. Said society is imparting education to the students upto 12th standard and nearly 750 students are studying in the said institution.

3. Present suit is filed by one Shrimati Suniti Sharma on behalf of the said society, being secretary to the said society and the Principal of the said school. A resolution authorising Shrimti Suniti Sharma to file suit was passed by the Governing body of the society on 6/3/2002.

4. As per the plaint allegations, land admeasuring 9229 square "Gaj" (one Gaj approximately 33 inches), belongs to the plaintiff society, out of which 2045 square Gaj of the land is under dispute in the case in hand which is delineated in red ink in the map attached to the plaint. Land delineated in green ink on in the plaint map on the northern side of the land in dispute belongs to the State.

5. According to the plaint allegation, the then ruler Jiwajirao Madhavrao Scindia executed a gift deed dated 30th of April, 1959 in favour of the plaintiff society of the land in dispute and the plaintiff society is in possession of the aforesaid land. The land is also recorded in the name of the plaintiff in the revenue records.

6. It is alleged that before execution of the gift deed, meter gauze and narrow gauze railway lines were passing through the said land and a marble factory was situated there which was run by the then Gwalior State. Big rocks of marbles used to be brought to the factory from Shivpuri through railway and used to be unloaded there. Weight of those rocks was so heavy, that they could not be either moved or lifted. It is alleged that the plaintiff society use to look after and take

care of those rocks and those rocks are still lying on the spot which shows that the plaintiff is in possession of the land in dispute.

7. It is alleged that the land shown in green colour in the map attached to the plaint is a Government land which was the property of the then Commerce Department of the Gwalior State and recorded in the name of Escher factory. Said land was taken on lease by M/s Compton Mumbai Limited from the then Gwalior State on rent of Rs.68 per annum which had constructed a show room there. Subsequently, due to some reasons, M/s Compton Mumbai Limited executed registered sale deed of the show room on 22/07/1921 in favour of one Lala Ramjidas Vaishya, father of defendant No.1. It is mentioned in the aforesaid sale deed that only the building of the show room was sold and the land on which the show room is built was not transferred and it was agreed that lease of the land on which the building of the show room situate was to be taken by Ramji Das from the State.

8. In para 8 of the plaint, it is further averred that the defendants in collusion with the Government officials got their names mutated in the revenue records. It is further alleged that Compton Mumbai Company had given the show room on rent to one Lala Kashinath Vaishya, uncle of the defendants C/o Pandit Shivnarayan Sharma, on the rent of Rs.200/- per month. After the death of Pandit Shivnarayan Sharma, said show room continued in possession of his heirs. Defendant No.1 had filed civil suit against them on 21/1/1969 which was numbered as Civil Suit No.2A/69. Said suit was decreed on 15/7/1996 and decree for ejectment was passed in favour of defendant No.1. Possession of the aforesaid property was obtained by the defendants by executing said decree on 7/9/2001 through court.

9. Present suit is filed by the plaintiff claiming its ownership to the said property on the basis of gift deed executed by the erstwhile ruler of the Gwalior State in favour of plaintiff society.

10. In the plaint, the plaintiff has prayed that it be declared that the plaintiff is the owner of the land delineated by red ink in the plaint map and he is in possession of the said land. He also prayed for relief of permanent injunction against defendants 1 and 2 restraining them from interfering in the suit land. The third relief claimed by the plaintiff was that it be declared that the land shown in green ink in the plain map is the Government land on which Compton Mumbai Company had constructed a show room and the defendants No.1and 2 have no title or interest in the said land. Fourth relief claimed by the plaintiff was that mandatory injunction be issued against defendant No. 3 to take back possession from defendants No.1 and 2.

11. On service of notice, defendants 1 and 2 and, 3 have filed their separate written statements. The trial Court on the basis of pleadings of the parties, has framed as many as six issues and after recording evidence decreed the suit of the plaintiff, hence, this first appeal at the instance of defendants No.1 and 2.

12. The first contention raised by Shri K.S.Tomar, learned Senior Advocate

appearing on behalf of appellants defendants 1 and 2 is that the decree passed by the trial Court in favour of the plaintiff is erroneous and without jurisdiction. He pointed out that so far as reliefs No 3 and 4 claimed by the plaintiff in para 21 of the plaint are concerned, same cannot be granted in the present case. Said reliefs are claimed by the plaintiff in favour of defendant No.3 State of Madhya Pradesh which has not filed any separate suit or counter claim, hence, in the absence of any suit on behalf of defendant State, decree in favour of defendant State of Madhya Pradesh declaring the land delineated in green lines cannot be granted in favour of the plaintiff. Similarly, no decree can be passed in favour of defendant No.3 State of Madhya Pradesh for taking possession of the land from defendants No.1 and 2 as defendant No.3 is not the plaintiff in the suit.

13. In the present case, the learned trial Court has passed decree in favour of defendant No. 3 State of Madhya Pradesh declaring defendant No.3 State of Madhya Pradesh to be the owner of the land delineated in green ink in the plaint map and also passed decree in favour of defendant No.3 State of Madhya Pradesh for possession in respect of the said land. Shri A.K.Chitley, learned senior Advocate assisted by Shri Ankur Mody, Advocate appearing for the respondent – plaintiff as well as the learned Government Advocate appearing for the respondent defendant State of Madhya Pradesh, could not, in any manner, justify that part of the impugned decree.

14. It is a well settled principle of law that decree in civil suit can be passed only in favour of plaintiff who has approached the court by filing suit. In the present case, defendant State of Madhya Pradesh had neither filed civil suit nor any counter claim. Hence, that part of the impugned decree is totally without jurisdiction and cannot be sustained in the eyes of law and as such, the impugned decree in respect of the land shown in green ink in the plaint map deserves to be set aside and is hereby set aside.

15. Now the question remains for consideration is about the part of the impugned decree in respect of the land which is shown by red ink in the plaint map.

16. The learned trial Court has, on the basis of the gift deed (Ex.P/3) has held that the land in question was gifted to the plaintiff society by the erstwhile ruler of the Gwalior State. On perusal of the gift deed (Ex.P/3) it does appear that the said gift was accepted by Shri G.K.Shinde, Ex Chief Justice, Madhya Bharat High Court (as he then was) as a donee. The trial Court has found to be this gift deed (Ex.P/3) to be legally proved and decreed the suit.

17. Shri K.S.Tomar, learned senior advocate appearing on behalf of the defendants 1 and 2 contended that the gift deed in the present case is not a valid document of title and does not confer any title upon the plaintiff. In support of his argument, he invited attention of this Court to Section 123 of the Transfer of Property Act, 1882 (for brevity the "Act"). Relevant portion of Section 123 reads as under :-

123. Transfer how effected.- For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

Section 123 of the Act, thus provides that for the purpose of making a gift of immoveable property, the transfer must be affected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

18. It is contended by Shri Tomar, learned counsel for the appellants defendants that from perusal of the gift deed (Ex.P/3), it is apparent that the said document is not attested by two witnesses although the gift deed is registered in presence of the Registrar. Shri Tomar contended that the requirement of two attesting witnesses to the gift deed is a mandatory provision and in absence of the two attesting witnesses, the gift deed is not a valid document and no title is conveyed in favor of the plaintiff on the basis of aforesaid gift deed.

19. It is also contended by Shri Tomar that no oral evidence to prove the execution of the gift deed is permissible in view of Section 92 of the Evidence Act which provides that when the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, no oral evidence is permissible to prove such written document. Therefore, it is contended that the oral evidence led by the plaintiff to prove the gift deed (Ex.P/3) is not admissible. Gift deed not attested as per the provisions of Section 123 of the Act is not admissible in evidence, and therefore, in absence of such evidence, the learned trial Court has committed error in passing decree, decreeing the suit in favour of the plaintiff. It is further contended by Shri Tomar, the learned senior counsel for the appellants defendants that the trial court has committed a grave error in holding the document to be legal only on the ground that the said gift deed is thirty years old by application of Section 90 of the Evidence Act. Said section merely provides for deeming presumption in respect of hand writing and signatures of thirty years old document, however, it does not dispense with the legal requirement of registration or attestation.

20. Shri Tomar, learned senior counsel for the appellants defendants 1 and 2 also contended that mere registration of the document will also not be fulfillment of requirement of attestation. It is contended that Registrar is an officer who registers the documents in discharge of his official duty and by registration of the document, the requirement of attestation, as provided by Section 123 of the Act cannot be dispensed with. For this purpose, he has relied upon a judgment of the Apex Court in the cases of *Abdul Jabbar vs. Venkata Sastri*, AIR 1969 SC 1147, *Ramesh Dutt Salwan vs. State and others*, AIR 1989 (NOC) 47 (Delhi).

21. In reply to these contention, Shri A.K. Chitley, learned senior advocate contended that the Act was not force in the State of Madhya Bharat which was

Part B State as per the provisions of Constitution of India. Section 1 of the Act provides that it extends at the first instance to the whole of India except the territories which, before the 1st November, 1956, were comprised in Part B States. However, this section further provides that the provisions of the Act may be extended to the whole or any part of the territories by issuing notification in the official gazette by the State Government concerned.

22. From perusal of the Commentary on the Transfer of Property Act, 1882 by Dr. Sir Hari Singh Gour, 10th Edition, it appears that the contention raised by Shri Chitley is not correct. Notification No.285-VI issued by the Madhya Bharat Government in its Gazette, dated 25th December, 1952 page 627 shows that the Act came into force in Madhya Bharat State from 1st of January, 1953. Gift deed (Ex.P/3) in the present case was executed on 13th April, 1959 and thus, on the date of execution of the gift deed, the provisions of the Act were applicable in the area.

23. Next contention raised by the counsel for the plaintiff respondent is that the provisions of Section 123 of the Act are ultra vires. He contended that there are other modes of transfer provided in the Act i.e. "Sale" under Section 54, "Mortgage" under section 58, "Lease" under section 106 "Exchange" under Section 118 and "Actionable claim" under Section 130. But except the gift deed, no other transfer requires attestation of two witnesses and therefore, the provisions of two attesting witnesses cannot be said to be in accordance with the law. This argument is without any merit, because except the 'gift' and 'will' under Indian Succession Act, consideration for other transfers is mandatory. In case of 'will' as well as 'gift' consideration is not necessary and therefore, the Legislature in its wisdom has put proof of these documents in more strict manner. Apart from this, Section 59 of the Act also requires that the mortgage be attested by at least two witnesses. In such a situation, the argument of Shri Chitley cannot be accepted. That apart, this argument was not raised by the plaintiff before the trial Court.

24. Next contention raised by the counsel for the respondent plaintiff is that the requirement of Section 123 of the Act which requires the gift deed to be attested by two witnesses is not a mandatory requirement, but this requirement is directory in nature. He contended that in the present case, the Registrar was personally knowing the donor and the donee who were ex Ruler and ex Chief Justice of Madhya Bharat High Court. Registrar had also put an endorsement on the gift deed he personally knows both the donee and donor, and therefore, the condition of attestation by two witnesses can be dispensed with in the present case.

25. This argument is again without any merit because when the law requires that a particular thing is to be done in a particular manner, that act should be done strictly in accordance with that manner. Section 123 of the Act provides for the attestation of the gift deed by two witnesses. The word "attested" is defined under section 3 of the Act which reads as under :

> "Attested" in relation to an instrument means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary.

26. So as per Section 123 of the Act, the document of gift deed must be attested by two witnesses provided by Section 3 of the Act.

27. The Apex Court in the case of *Abdul Jabbar* (supra) has already held that the Registrar registering the document is not an attesting witness. The Registrar registers the document in performance of his official duty and will not dispense with the request of two attesting witnesses provided under Section 123 of the Act.

28. Now the contention of Shri Chitley, learned senior advocate for the respondent defendant is that said requirement is not mandatory. In support of his argument, he relied on page No.362 of the Book Principles of Statutory Interpretation by Justice G.P.Singh (Tenth edition). The author has laid down principles to find out which of the provision is mandatory and which is directory in nature. Quoting large number of cases, it lays down no universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of the courts of justice to to to get at the real intention of the Legislature by carefully attending to whole scope of the statute to be considered. The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern and these are to be ascertained not only from the phraseology or the provision, but also considering its nature, its design, and the consequences which would follow from construing it the one way or the other.

29. Thus, the principle which is followed by the Apex Court in number of cases is that the court may consider inter alia, the nature and design of the statute and the consequences which would follow from construing it the one way or the other and impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered.

30. Shri Chitley, learned senior advocate for the respondent plaintiff contended

that as per law laid down by the Apex Court, in absence of any consequence or penalty provided for non-compliance of the provision, the provision is to be construed as directory and not mandatory. We find that this argument is also without any merit in the present case. It is true that no penalty is imposed for non-compliance of the condition of attestation of two witnesses on the gift deed, but in the absence of this condition, the gift deed itself cannot be said to be legally complete and does not convey any title in favour of the donee because when the law requires that a particular thing is to be done in a particular manner, then the same has to be done in the manner provided by law else the act is illegal. Therefore, consequence of absence of two attesting witnesses cannot be said to be directory but it is mandatory in nature.

31. Patna High Court in the case of *Mst. Samrathi Devi vs. Parasuram Pandey*, AIR 1975 Patna 140 has considered the validity of the gift deed which was not attested by two witnesses and held in para 11 of its judgment as under :-

> With respect to the question of of due attestation of the document in question according to Section 123 of the Transfer of Property Act "for the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses." The word "attested" has again been defined in Section 3 of the said Act, which in relation to an instrument, means "attested by two or more witnesses each of whom has seen the executant."

32. Patna High Court in the aforesaid case has held that in the absence of attestation as provided in section 123 read with Section 3 of the Act of the gift deed, the transfer is not valid. Similar view is taken by the Allahabad High Court in the case of *Lachman Singh vs. Surendra Bahadur* AIR 1932 Allahabad 527 wherein the question was whether the mortgage deed in the absence of two attesting witnesses can be admitted in evidence and Full Bench of Allahabad High Court has held that where a mortgagee sues to enforce his mortgage and the execution and attestation of the deed are not admitted, the mortgagee need prove only this much that the mortgagor signed the document in the presence of an attesting witnesses and one m an attested the document, provided that the document on the face of it bears the attestation of more than one person; but if the validity of the mortgage be specifically denied, in the sense that the document did not effect a mortgage of law, then it must be proved by the mortgagee that the mortgage deed was attested by at least two witnesses.

33. Aforesaid view is followed by Hon. Mr. Justice V.N.Khare (as he then was) sitting singally in the case of *Shrimati Mallo vs. Shrimati Bakhtawari and others*, AIR 1985 Allahabad 160 wherein it was held that admission by executant donor about the existence of gift deed obtained by fraud did not dispensed with proof of attestation.

34. In the present case, from the face of the gift deed (Ex P/3) itself, it is clear that the document is not attested by any of the attesting witnesses, hence, the said deed is not a legal gift deed and does not convey any title to the plaintiff.

35. Shri Chitley, learned senior advocate for the respondent plaintiff further contended that the present appellant has no right to challenge the gift deed as he is stranger to that transaction; no stranger can challenge the transaction between the donor and the donee. In support of his contention, he lay hand on the judgment of the Apex Court in the cases of *State of West Bengal vs. The Dalhousie Institute Society,*(1970) 3 SCC 802, *Collector of Bombay vs. Municipal Corporation of the City of Bombay,,* AIR 1951 SC 469 and *Smt Bhanumati Chauhan vs. Chetan Singh and others,* AIR 1997 HP 48. Those cases do not support the case of the plaintiff in the present case, because in those cases, gift deed was admitted in the written statement.

36. The argument of Shri Chitley that the defendants being stranger to the gift deed cannot challenge the transaction between the donor and donee is concerned, that argument also does not hold water because present suit is filed by the plaintiff for declaration of its title on the basis of the gift deed and unless and until the plaintiff establishes its title against the defendant, it is not entitled to a decree for declaration in the present case. Plaintiff's case is solely based on proof of title on the basis of the gift deed (Ex.P/3) which on the face of it is not attested by two witnesses and therefore, the plaintiff cannot get decree for declaration of its title in the present case in the absence of valid transfer in its favour. Hence, the learned trial Court has committed error in granting said decree and the finding of the trial Court that the title is proved only because the document is thirty years old cannot be sustained. Section 90 of the Evidence Act will not dispense with the requirement of Section 123 of the Act.

37. Next contention raised by the counsel for the plaintiff respondent is that even in absence of title, the plaintiff is entitled for decree of injunction against the defendants in the light of the judgment of the Apex Court in the case of *Nair Service Society vs. K.C. Alexander,* AIR 1968 SC 1167 and *Rame Gowda vs. M.Varadappa Naidu,* (2004) 1 SCC 769. In both the aforesaid decisions, the Apex Court has laid down that if the plaintiff is in settled possession of the property in question, injunction can be granted in his favour to protect his possession in spite of the fact that his title is not proved.

38. There is no dispute about this proposition. However, question in the present case is whether the plaintiff is in possession of the suit land. Plaintiff in para 5 of the plaint has stated that name of the plaintiff is recorded in the revenue record as owner. However, no revenue entry is produced by him. It is also averred by the plaintiff in para 6 of the plaint that the plaintiff was managing the property from the time when a marble factory was existing there i.e. from the time of Ex Ruler. However, no document to that affect is produced by the plaintiff.

39. Only evidence led by the plaintiff is the oral statement of Lt. Col. Virendra Chaturvedi (PW 2) and Virendra Singh Chouhan (PW 3). Lt.Col Virendra Chaturvedi (PW 2) in his statement before court has given description of the property and stated that the suit land was given by the Ex Ruler to the plaintiff society on 13/4/1959. Broad gauze and narrow gauze railway lines were passing through the land on which marble factory was situated. Certain marble rocks are still lying on the spot. In para 9 of his statement, he has contended that defendants 1 and 2 never remained in possession of the suit land. In para 23 of his cross examination, he has stated that he does not know whether the land was measured by the Sub Divisional Officer at the instance of defendants 1 and 2. He also denied that Scindia Kanya Vidyalaya has raised any objection for said measurement. In para 31 of his cross examination, he further says that he had seen the building 25-30 years ago and thereafter he had not seen the spot as he was in service. He got knowledge of the case, only in September, 2004 when he returned back from service. He deposed that he was not present when possession of the land was delivered to defendants 1 and 2 in a civil suit filed against Sharma brothers. He is unable to give the khasra numbers of the land which is in possession of the plaintiff. In para 33, he admitted that till the civil suit was pending between the defendants and Sharma brothers, the plaintiff has not raised any objection nor taken any step because the plaintiff was in possession and there was no need to take any objection.

40. Thus, this witness has admitted that the decree in the civil suit against Sharma brothers was in respect of some other land. In para 36, this witness has further admitted that in the revenue record name of Ramjidas i.e. the father of the defendant was entered in the year 1940 on the basis of the sale deed executed in the year 1921 and the name of the defendant still continues in the revenue record. He says that it is true that in the revenue entry Ex.D/2 name of Ramjidas i.e. father of the plaintiff is recorded. This is the Khasra of Samvat 2004 i.e. year 1948. Again in para 38, he admitted that Ramjidas is in possession of the land bearing survey number 392 and after his death present defendants are in possession. He further admitted that from the year 1940 till today, no objection is raised by the plaintiff against recording of the defendants' name against the said land. He further says that no objection was raised as the plaintiff was in possession. In para 43, he further admitted that even after the death of Ramjidas they have not taken any step for correcting the revenue entries.

41. Another witness examined by the plaintiff in support of its case is Virendra Singh Chouhan (PW 3) who says that he has seen the land for the first time in November, 1995 when he was appointed in the said institution. Thus, this witness also does not prove the possession of the plaintiff on the land in question.

42. Defendants 1 and 2, in rebuttal, have filed copies of revenue entry i.e. Ex.D/2 which shows that name of Ramjidas is recorded against the suit land to be in

possession. This revenue entry is of the year 1940. Ex. D/3 is the revenue entry of the year 1987-88 which also shows the names of the present appellants to be in possession of the suit land. Ex.D/4 is the revenue entry of the year 1998-99 and 2000-01 which shows that defendants 1 and 2 are in possession of the property. Ex.D/5 is the revenue entry showing entries from Samvat 2026 to 2030. These revenue entries show the name of Ramjidas, father of the defendants 1 and 2 to be recorded as owner of the land in question.

43. Contention of the plaintiff in respect of the revenue entries produced by the defendants 1 and 2 is that these revenue entries were created by manipulation by the defendants. Defendant State of Madhya Pradesh has filed separate written statement in the matter and the defendant State in its written statement has admitted in para 7 that the sale deed was executed in respect of the suit land in favour of the defendants on 22/7/1921 and on that basis, name of defendant No.1 was recorded as Up Krishak. In para 13, it is averred that the land bearing survey numbers 379,380,389,390 and 391 was recorded in the name of M/s Compton Company. It is specifically denied that there is any collusion between the Government employees and the defendants. In para 15 of the written statement, it is denied by the defendant State that the revenue entries were manipulated with the collusions of officials of the Government. Apart from this evidence, Ex.D/1 shows that the defendants 1 and 2 were put in possession of the property in execution of a decree passed by the civil court in Civil Suit No.13/89 in March, 1990.

44. Thus, it is an admitted position that name of the defendant is recorded in the revenue record against the suit land. In the present case, this Court is not required to decide the title of the defendants and this Court is called upon only to decide the title of the plaintiff. Plaintiff has failed to prove his title to the suit property nor it is in possession of the property in question. The learned trial Court in para 19 of its judgment has held title of the plaintiff proved only because the alleged gift deed (Ex.P/3) is thirty years old document and therefore, presumption can be drawn in favour of the plaintiff about genuineness of the document. This approach of the learned trial Court is contrary to law because Section 90 of the Evidence Act attaches presumption about the signature and does not dispense the legal requirement of attestation. Hence, merely because the gift deed is 30 years old, it cannot be said that the transaction is proved in absence of mandatory requirement of Section 123 of the Act.

45. So far as finding about possession is concerned, the learned trial Court in para 29 of the impugned judgment has come to the conclusion that since the plaintiff has title to the suit property, it is presumed that it is in possession of the suit property. For arriving at this conclusion, the learned Trial Court has not at all discussed evidence on record and straightway came to the conclusion without any reference to the revenue entries.

46. So far as revenue entries filed by the defendants 1 and 2 are concerned, they are certified copies of the public documents. It is true that revenue entry can be rebutted by leading oral evidence, but in the present case, there is absolutely no evidence on the part of the plaintiff to rebut the revenue entries filed by the plaintiff. On the contrary, defendant State of Madhya Pradesh in its written statement has admitted the revenue entries filed by defendants 1 and 2 to be genuine. Apart from it, Ex.D/1 shows that the defendants 1 and 2 were put in possession of the property in execution of a decree. Hence, the finding of the trial Court that the plaintiff is in possession of the disputed land can also not be sustained and is hereby set aside.

47. Considering all these aspects of the matter, decree in favour of the plaintiff for declaration as well as injunction cannot be sustained in the eyes of law and is hereby set aside.

48. Resultantly, appeal stands allowed with costs setting aside the judgment and decree impugned herein and the suit of the plaintiff is dismissed with costs.

Appeal allowed.

I.L.R. [2008] M. P., 3270
APPELLATE CIVIL
Before Mr. Justice S. Samvatsar
21 November, 2008*

NATIONAL INSURANCE COMPANY LTD. ... Appellant
Vs.
VIDHYABAI & ors. ... Respondents

A. Motor Vehicles Act (59 of 1988), Sections 173 & 96(2)(b) - *Liability of the Insurance Company* - *Driver having a valid license carrying passengers in a tractor trolley insured for agriculture purpose without the knowledge of the owner - Insurance Company alleging breach of policy - Held -Breach means infringement or violation of a promise or obligation - As such, the Insurance Company will have to establish that the insured was guilty of an infringement or violation of a promise - The insurer has also to satisfy the tribunal or the court that such violation or infringement on the part of the insurer was wilful - No evidence on record that the passengers, who were carried in the tractor trolley, were carried with due knowledge or permission of the owner -Insurance Company cannot repudiate its statutory liability.* (Para 5)

क. मोटर यान अधिनियम (1988 का 59), धाराएँ 173 व 96(2)(बी) – बीमा कम्पनी का दायित्व – वैध लायसेंसधारी चालक स्वामी की जानकारी के बिना कृषि प्रयोजन के लिए बीमित ट्रेक्टर ट्रॉली में यात्रियों को ले गया – बीमा कम्पनी ने पॉलिसी भंग करने का अभिकथन

*M.A. No.365/2000 (Gwalior)

किया – अभिनिर्धारित – भंग का अर्थ वचन या आभार का अतिलंघन या उल्लंघन है – इस रूप में बीमा कम्पनी को यह स्थापित करना होगा कि बीमित वचन के अतिलंघन या उल्लंघन का दोषी था – बीमाकर्ता को अधिकरण या न्यायालय को भी संतुष्ट करना होता है कि बीमाकर्ता की ओर से ऐसा उल्लंघन या अतिलंघन जानबूझकर था – अभिलेख पर ऐसा साक्ष्य नही है कि यात्रियों को ट्रेक्टर ट्रॉली में स्वामी के सम्यक् ज्ञान या अनुमति से ले जाया जा रहा था – बीमा कम्पनी अपने वैधानिक दायित्व से इनकार नही कर सकती।

B. Motor Vehicles Act (59 of 1988), Section 96(2)(b) - *Liability of the Insurance Company - Agriculture Purpose - The word "agricultural purpose" is not defined in the Act - The condition with respect to use of vehicle for agricultural purpose is only in the policy - If the passengers are carried in a tractor trolley then due to breach of the condition of the policy, Insurance Company may not escape the liability.* (Para 6)

ख. मोटर यान अधिनियम (1988 का 59), धारा 96(2)(बी) – बीमा कम्पनी का दायित्व – कृषिक प्रयोजन – शब्द "कृषिक प्रयोजन" अधिनियम में परिभाषित नही है – वाहन का प्रयोग कृषिक प्रयोजन के लिए करने की शर्त केवल पॉलिसी में है – यदि ट्रेक्टर ट्रॉली में यात्रियों को ले जाया जाता है तब पॉलिसी की शर्त भंग होने के कारण बीमा कम्पनी दायित्व से नही बच सकती।

Cases referred :

(2007) 9 SCC 486, (2003) 2 SCC 223, (2008) 5 SCC 403, ILR [2008] MP 282, 1991 ACJ 1137, AIR 1996 SC 2627.

S.S. Bansal, for the appellant.

M.K. Jain, for the respondents.

ORDER

S. SAMVATSAR, J.:-This appeal is preferred by the Insurance Co. challenging the Award dated 16/3/00, passed by the Member Judge of the Motor Accident Claims Tribunal, Vidisha in Claim Case No.97/98 whereby the Claims Tribunal has awarded a sum of Rs.2,68,000/- towards compensation for the death of deceased Harnam Singh s/o Harprasad, aged around 32 years.

2. According to the claimants, on 15/2/97, deceased Harnam was travelling in a trolley attached to tractor bearing registration No. MP08-A-6071 alongwith other persons for going to attend a marriage ceremony. The driver of the tractor was driving the said vehicle rashly and negligently due to which Harnam Singh fell down from the tractor and sustained injuries. He died in the incident. Hence, his L.Rs.filed an application for compensation. According to them, the deceased was working in a Casheriya Concrete Product Ltd. and was earning Rs.1936/- per month. The Claims Tribunal assessed the compensation of Rs. 2,68,000/- and awarded compensation accordingly. Hence, this appeal.

3. The Insurance Co. has filed this appeal against the findings of the Claims Tribunal that the Insurance Co. is jointly and severally liable for payment of compensation alongwith the owner and driver of the vehicle while the claimants

have filed cross-objections registered as I.A.No.8517/08 for enhancement of compensation.

4. Shri S.S.Bansal, learned counsel appearing for the Insurance Co. contended that as the deceased was travelling in a tractor, the Insurance Co. is not liable to pay compensation. Learned counsel for the Insurance Co. in support of his arguments has relied upon the judgment of the Apex Court in the case of *New India Assurance Co. Ltd. Vs. Vedwati* reported in (2007)9 SCC486. In the said judgment the Apex Court has held that the Insurance Co. is not liable for payment of compensation for the death of a passenger travelling in a goods vehicle. For this purpose, the Apex court has relied upon its earlier judgment in the case of *New India Assurance Co. Ltd. Vs. Asha Rani* reported in (2003)2 SCC 223 and other judgments. Another judgment relied upon by the learned counsel for the appellant is in the case of *National Insurance Company Ltd. Vs. Prema Devi and others* reported in (2008)5 SCC 403 wherein the Apex Court again considered the question about the liability of the Insurance Company to pay compensation in cases of death of or injury to passengers travelling in a goods vehicle. He also relied on the Division Bench decision of this court in the case of *Arun Kumar Patel & another Vs. Smt. Terasi Saket and others* reported in ILR (2008)MP 282 wherein the Division Bench of this court has held that the Insurance Co. on the death of a person travelling in a tractor-trolley after attending marriage ceremony, is not liable for payment of compensation. There is no dispute about the prepositions laid down by these judgments.

5. In the present case, the tribunal has held that the Insurance Co. is liable for payment of compensation as the alleged breach of condition of policy was not within the knowledge of the owner. The claims tribunal has found that in the present case the tractor was registered only for agricultural purpose and there is no evidence on record to show that the passengers were carried in the said tractor trolley within the knowledge of the owner and thus the owner of the vehicle has not committed breach of any policy condition. For this preposition the Claims Tribunal has relied upon the decision of the Apex Court in the case of *Bhagwandas Vs.National Insurance Company* reported in 1991 ACJ 1137. The Apex Court in the case of *Sohan Lal Passi Vs. P.Sesh Reddy* reported in (AIR 1996 SC 2627) has considered the meaning of expression "breach" occurring in Section 96(2)(b) and held that breach means infringement or violation of a promise or obligation. As such, the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the tribunal or the court that such violation or infringement on the part of the insurer was willful. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability. In the present case it is not disputed that the vehicle was driven by the licensed driver.

There is no evidence on record that the passengers who were carried in the tractor-trolley were carried with due knowledge or permission of the owner.

6. Shri Bansal, learned counsel for the Insurance Co. tried to distinguish the aforesaid judgment by saying that in that case there was no breach of statutory provision of law hence, the aforesaid judgment is distinguishable. This argument is without any basis because the word "agricultural purpose" is not defined in the Motor Vehicles Act. The condition with respect to use of vehicle for agricultural purpose is only in the policy. If the passengers are carried in a tractor or trolley then due to breach of the condition of the policy the Insurance Co. may not escape the liability. In such circumstances, the ratio laid down by the Apex Court in the case of *Sohan Lal Passi* (supra) is squarely applied in the present case and the tribunal has rightly held that the Insurance Co. is jointly and severally liable for payment of compensation.

7. So far as quantum is concerned, as per the claimants the deceased was earning Rs.1936/- per month and the Claims Tribunal has also held that the monthly income of the deceased was Rs 1936. Considering the age of the deceased, i. e. 32 years the income of the deceased can be safely assessed at Rs.2,000/-per month which yearly comes to Rs.24,000/-. Making 1/3rd deductions towards self expenditure of the deceased, loss of annual dependency comes to Rs.16,000/-. The deceased was aged 32 years hence multiplier of 17 would be applicable. On applying multiplier of 17, the compensation comes to Rs.2,72,000/-. Apart from this, the claimants are also entitled for compensation on other head such as loss of estate, loss of expectancy of life and funeral etc. Considering this, the total compensation comes to Rs.2,90,000/-.The compensation enhanced by this court to carry the interest at the rate of seven percent per annum from the date of filing of the claim petition till realization.

(8) The appeal filed by the Insurance Co. is accordingly dismissed while the cross-objections filed by the respondents are allowed in the manner indicated above.

Order accordingly.

I.L.R. [2008] M. P., 3273
APPELLATE CIVIL
Before Mr. Justice Arun Mishra & Mr. Justice S.A. Naqvi
29 November, 2007*

MEERA (SMT.) & ors. ... Appellants
Vs.
JOLLY ROAD LINES & ors. ... Respondents

Motor Vehicles Act (59 of 1988), Section 166, Rules of the Road Regulations, 1989, Rule 20(3), (4) - *Negligence - Towing - Deceased who*

*M.A. No.838/2003 (Jabalpur)

was driving motorcycle dashed with truck which was being towed by another truck - Drivers and owners of both the trucks remained ex parte - Burden of proof of observance of Rule 20 was on driver, owner and insurer of trucks - No evidence that the speed of truck was not exceeding 24 Kms/hrs and the distance between both the trucks was at no time exceed 5 meters - No written signboard mentioning the words 'ON TOW' on the rear of the truck being towed as per Rule 20(3) - Deceased was not negligent - Appeal allowed. (Para 7)

मोटर यान अधिनियम (1988 का 59), धारा 166, सड़क विनियमन के नियम, 1989, नियम 20(3) व (4) – उपेक्षा – खींचना – मृतक जो मोटरसाइकिल चला रहा था ट्रक से टकरा गया, जिसे अन्य ट्रक द्वारा खींचा जा रहा था – दोनों ट्रकों के चालक और स्वामी एकपक्षीय रहे – नियम 20 के अनुपालन के संबूत का भार ट्रकों के चालक, स्वामी और बीमाकर्ता पर था – कोई साक्ष्य नही कि ट्रक की गति 24 किमी/घण्टा से अधिक नही थी और दोनों ट्रकों के बीच किसी भी समय 5 मीटर से अधिक की दूरी नही रही – जो ट्रक खींचा जा रहा था उसके पीछे नियम 20(3) के अनुसार 'ON TOW' लिखा हुआ साइन बोर्ड नही था – मृतक उपेक्षावान नही था – अपील मंजूर।

L.N. Sakle, for the appellants.

Sanjay Agrawal with *Pramod Sahu,* for the respondent No.3.

ORDER

The Order of the Court was delivered by ARUN MISHRA, J. :– The appeal has been preferred by the claimants being aggrieved dismissal of the claim petition as per award dated 07.08.02 passed by IXth Motor Accident Claims Tribunal, Jabalpur in M.V.C. No. 96/2000.

2. The claimants widow, minor children and parents of the deceased Ram Sahay (aged about 38 years) have preferred claim petition on account of death of Ram Sahay in an accident dated 17.1.2000. The truck (MP 20-G/0191) was towing another truck (MP 20-A/992) due to rash and negligence driving of the truck No. MP 20-G/0192 the motorcycle dashed with the truck No. MP 20-A/992 Ram Sahay got entangled alongwith motorcycle with it Ram Sahay sustained injuries and motorcycle was also damaged. The report of the accident was lodged at Police Station Shahpura. The deceased was a teacher in the Govt. School and used to earn a sum of Rs.7,000/- per month. Compensation of Rs.22,88,000/- was claimed. The truck No. MP 20-G/0192 was owned by respondent No.1 Jolly Road Lines, the respondent No.2 Vimesh @ Vasant was driver of the truck (MP 20-G/0192) and truck was insured with respondent No.3 the National Insurance Company Limited. The truck No. MP 20-A/992 was driven by Raghuvir Prasad Yadav, owned by Hardayal Singh and insured with the National Insurance Company Limited.

3. The drivers and owners of the trucks remained ex-parte. The insurer in its reply denied the liability to make the compensation on the ground that on the date

of accident driver was not holding valid and effective driving licence. The owner and insurer of the motorcycle were necessary party. The deceased himself was negligent. Towing truck was not driven in terms and conditions of the policy and towing of another vehicle was not permissible under the terms and conditions of the insurance policy.

4. The tribunal has held that the accident was out come of negligence of the deceased himself. Consequently, compensation of Rs.50,000/- under no fault liability has been awarded by way of interim compensation alongwith interest at the rate of 9% till payment was made.

5. Shri L.N. Sakle, learned counsel appearing on behalf of the appellants has submitted that the finding recorded by the tribunal with respect to negligence of the deceased is contrary to the version of Ajit Singh (CW-2). The FIR was lodged by Ajit Singh (CW-2) he has also been examined as claimants witness, his statement has not been appreciated in proper perspective by the tribunal. The deceased was drawing salary of Rs.7,000/- per month as apparent from the statement of his widow and the documents Ex.P/1 and Ex.P/2 PPO and gratuity. Thus, just and proper compensation be awarded.

6. Shri Pramod Sahu, appearing on behalf of the insurer has submitted that motorcycle as well as both the trucks were going in the same direction. The truck No. MP 20-G/0192 had crossed the motorcycle thereafter motorcycle got entangled with the towed truck No. MP 20-A/992. Thus, deceased himself was negligent. There are contradictions in the FIR and the statement of Ajit Singh (CW-2) as found by the tribunal. Thus, no case for interference in the appeal is made out.

7. First question for consideration is that whether the deceased himself was negligent. It was not disputed that truck No. MP 20-G/0192 was towing another truck No. MP 20-A/992. It is also not disputed that the motorcycle got entangled with the towed truck i.e. MP 20-A/992. We find on record, FIR, lodged by Ajit Singh (CW-2) as well as his statement recorded before the tribunal, the drivers of the trucks, owners and the insurer have not examined any witnesses. The FIR Ex.P/4, records that the deceased was going on his Yezdi motorcycle from Natwara to Shahpura and the truck No. MP 20-G/0192 was towing another truck No. MP 20-A/992. Ram Sahay was on his side of the road but truck No. MP 20-G/0192 came to the wrong side caused accident, the driver of the said truck drove it rashly and negligently in excessive speed and brought the truck towards Ram Sahay owing to that the truck No. MP 20-A/992 which was being towed, dashed the motorcycle deceased got entangled alongwith the motorcycle in truck being towed. Ram Sahay sustained injuries on various parts of the body and became unconscious. The report was lodged with promptitude within 30 minutes of the accident and we do not find any ground so as to the disbelieve the aforesaid facts mentioned in the FIR. We have considered the statement of Ajit Singh (CW-2), he has owned lodging the FIR in the concerned Police Station. He stated that

deceased was on his side of his road, deceased thought that one truck has crossed but another truck which was being towed dashed the deceased. Deceased had given the side to the first truck and was dashed by the truck being towed as he came in front of the truck. Though, he has made statement at some variance from FIR but we find that the version of FIR to be more probable and plausible as to method and manner of the accident as the truck towing the truck No MP 20-A/ 992 was taken angularly to one side of the road that was the reason the truck which was being towed, dashed the motorcycle. We find negligence of truck driver on the strength of the facts mentioned in the FIR. Apart from non observance the rules as to towing contained in Rule 20 of the Rules of the Road Regulations, 1989. Rule 20 (1) to (4) quoted below:-

(1) No vehicle other than a mechanically disabled motor vehicle or incompletely assembled motor vehicle, a registered trailer or a or a side car, shall be drawn or towed by any motor vehicle, except for purposes pf delivery and to the nearest filling station or garage.

(2) No motor vehicle shall be drawn or towed by any other motor vehicle unless there is in the driver's seat of the motor vehicle being drawn or towed a person holding a licence authorizing him to drive the vehicle or unless the steering wheels of the motor vehicle being towed, are firmly and securely supported clear of the road surface by some crane or other device on the vehicle which is drawing to towing it.

(3) When a motor vehicle is being towed by another motor vehicle the clear distance between rear of the front vehicle and the front of the rear vehicle shall at no time exceed five meteres. The tow ropes, or chains shall be of a type-easily distinguishable by other road users and there shall be clearly displayed on the rear of the vehicle being towed in black letters not less than 75 mm high and on a white background the words "ON TOW"

(4) No motor vehicle when towing another vehicles other than a trailer or signs car shall be driven at a speed exceeding 24 K.M per hour.

In our considered opinion, in case there was distance not exceeding 5 meters between the two vehicles as provided in aforesaid rule 20 (2) it would not have been possible for the deceased after giving side to the first truck to come in front of the later truck which was being towed considering the period which must have been consumed. Thus, version of the FIR that first truck was plied in excessive speed in rash and negligent manner and was taken angularly towards the side of the deceased, though deceased had given the side as stated by Ajit Singh (CW-2) but due to angular direction the motorcycle of deceased was dashed by the first truck. We find that truck was plied in excessive speed, more than 24 km per hours. As mentioned in the FIR, it was driven in excessive speed. Drivers of the

trucks did not enter the witness box when Ajit Singh (CW-2) has stated that truck was in normal speed, he has not stated that truck was in slow speed while towing truck was required to be 24 km or below speed whereas normal speed is usually 40-50 km per hours. Thus, there was violation of sub Rule (4) of Rule 20. Besides there is no evidence placed on record on behalf of the drivers and owners of the both trucks, to show that distance between the two vehicles was not exceeding five meters. No written sign board mentioning the words "ON TOW" on the rear vehicle was placed as mandated by sub Rule (3) of Rule 20. Thus, basic precaution while towing the truck were also not followed. The burden of proving observance of the precautions as provided in rule 20 was on the driver, owner and insurer of the trucks. But they have not adduced any evidence in that regard. The nature of accident speaks hence we are compelled to infer that facts mentioned in the FIR to be correct, we act upon it in holding that deceased was not negligent and the accident was caused due to negligence of the driver of truck No. MP 20-G/0192 and while towing the basic precautions were not observed.

8. Coming to the question of quantum of compensation to be awarded. It is apparent from the Ex.P/1 and Ex.P/2 i.e. PPO/gratuity payment order that what was the basic salary of the deceased. He used to get in addition dearness allowance also. For the purpose of computation of gratuity only basic salary was taken into consideration. Dearness allowance was not included in PPO/gratuity was not disputed at bar. Thus, we find ring of truth in the statement of Meera Tiwari (CW-1) salary on inclusion of dearness allowance was Rs.6,500/-. Deceased was young aged about 38 years he had bright future prospects ahead he would have obtained the promotion before his retirement. Thus, we deem it appropriate to take his salary considering the future prospects at Rs.7,000/- per month annual income comes to Rs.84,000/-. After making 1/3rd conventional deduction towards self-expenditure, which amount deceased would have spent on himself had he been alive, the annual loss of dependency comes to Rs.56,000/- the multiplier of 16 is applicable as per second schedule of the Motor Vehicles Act. We apply the multiplier of 16. Consequently, the compensation on account of loss of dependency comes to Rs.56,000/- X 16= Rs.8,96,000/-. Apart from that, we award a sum of Rs.40,000/- under customary heads such as loss of estate, loss of expectancy of life and funeral expenses inclusive of a sum of Rs.10,000/- awarded to the widow of deceased on account of loss of consortium. Thus, the total compensation comes to Rs.9,36,000/- (Rs. Nine lacs thirty six thousand only). The compensation to carry interest at the rate of 7% per annum from the date filing of claim petition till realization.

9. The claimants are widow, two minor children and parents. The age of parents at the time of filing the claim petition was 72 and 65 years. We deem it appropriate to award 15% of the compensation amount to the parents and remaining 85% of the compensation in equal proportion to the widow and minor children. The tribunal

to follow the guidelines in the matter of disbursement of amounts laid down in *General Manager Kerla State Road Transport Corporation Limited Vs. M/s Susamma Thomas & others* AIR 1994 SC 1631. The respondents are jointly and severally liable to make the payment of compensation.

10. Resultantly, the appeal is partly allowed. No costs.

Appeal partly allowed.

I.L.R. [2008] M. P., 3278
APPELLATE CRIMINAL
Before Mr. Justice S.L. Kochar
13 March, 2008*

ARSHAD @ ARSAD ... Appellant
Vs.
STATE OF M.P. ... Respondent

A. Penal Code (45 of 1860), Section 307 - *Attempt to murder* - *Due to quarrel before eight days, appellant caused serious injuries on abdomen and head of victim by knife - Statement of eye witnesses corroborated by medical evidence - The defence story that victim and witnesses abused and assaulted appellant - Held - In absence of any report lodged by the appellant or defence witnesses and medical report of injuries sustained by appellant, defence story would not be accepted - Doctor has specifically opined that the injuries were sufficient in the ordinary course of nature to cause death - Sufficient circumstances to establish that appellant caused injuries to victim with the intention of murder - Appellant committed the offence of attempt to murder punishable u/s 307 IPC - Appeal dismissed.* (Paras 14, 15 & 16)

क. दण्ड संहिता (1860 का 45), धारा 307 – हत्या का प्रयास – आठ दिन पूर्व के झगड़े के कारण अपीलार्थी ने पीड़ित के पेट और सिर में चाकू से गम्भीर क्षतियाँ कारित कीं – प्रत्यक्षदर्शी साक्षियों के कथन चिकित्सीय साक्ष्य से पुष्ट हुए – प्रतिरक्षा कहानी, कि पीड़ित और साक्षियों ने अपीलार्थी को गालियाँ दीं और हमला किया – अभिनिर्धारित – अपीलार्थी या प्रतिरक्षा साक्षियों द्वारा दर्ज किसी रिपोर्ट और अपीलार्थी को आयी क्षतियों की चिकित्सीय रिपोर्ट के अभाव में प्रतिरक्षा कहानी स्वीकार नही की जायेगी – चिकित्सक ने विशिष्ट रूप से राय दी कि क्षतियाँ प्रकृति के सामान्य अनुक्रम में मृत्यु कारित करने के लिए पर्याप्त थीं – यह स्थापित करने के लिए पर्याप्त परिस्थितियाँ कि अपीलार्थी ने हत्या करने के आशय से पीड़ित को क्षतियाँ कारित कीं – अपीलार्थी ने भा.द.सं. की धारा 307 के अधीन दण्डनीय, हत्या के प्रयास का अपराध कियां – अपील खारिज।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 386 - ***Appeal*** - *Both appellant and his counsel remained absent on various appointed days for hearing - Appeal can be heard finally on merit.*

(Para 2)

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*Cr.A. No.854/1994 (Indore)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 386 – अपील – अपीलार्थी और उसके अधिवक्ता दोनों सुनवाई के लिए नियत विभिन्न तारीखों पर अनुपस्थित रहे – अपील गुणदोषों पर अंतिम रूप से सुनी जा सकती है।

C. Criminal Practice - *Burden on defence is not as onerous as on the prosecution to prove its case - Merely giving suggestion to witnesses and examining the defence witnesses - Version of defence would not be accepted unless it is substantiated & corroborated by material particulars.*

(Para 14)

ग. दाण्डिक पद्धति – प्रतिरक्षा पर भार उतना अधिक नही है जितना अभियोजन पर अपने मामले को साबित करने का होता है – केवल साक्षियों को सुझाव देना और प्रतिरक्षा साक्षियों का परीक्षण कराना – प्रतिरक्षा पक्ष की कथा स्वीकार नही की जायेगी जब तक कि वह तात्विक विशिष्टियों के द्वारा प्रमाणित और पुष्ट न हो जाये।

Case referred :

AIR 1996 SC 2439, (1969) 9 SCC 372, JT 2008 (I) SC 172, 2007(I) SCC (Cri) 25, 2007(I) SCC (Cri) 123.

None, for the appellant.

Manish Joshi, Panel Lawyer, for the respondent/State.

J U D G M E N T

S.L. Kochar, J. :–By this appeal, the appellant seeks to set aside the judgment dated 7th December, 1994 rendered by the learned First Addl. Sessions Judge, West Nimar Barwani in Sessions Trial No.73/91, thereby convicting the appellants under section 307 IPC, and sentencing him to undergo R.I. for four years and to pay a fine of Rs. 500/-, in default of payment of fine to suffer imprisonment for three months.

2. This appeal was listed in weekly as well as daily cause lists, but none appeared for the appellant. On 15.10.07, none had appeared on behalf of the appellant, therefore, the appeal was listed on 02.01.08. On this date also, none appeared, but the record shows that the appellant appeared in the office and marked his presence and also he was given the date for appearance as 28.04.08. On 07.02.08, 08.02.04, 14.02.08, 15.02.08, 22.02.08, 05.03.08 and 11.03.08, none had appeared for and on behalf of the appellant. The appellant is not present even today. Therefore, in view of the Supreme Court Judgments rendered in the cases of *Benisingh V/s State of U.P.* (AIR 1996 SC 2439), *Kishansingh V/s State of U.P.* (1996)9 SCC 372) and *Dharampal and others V/s State of U.P.* (Judgment Today 2008(Vol.I) SC 172), the appeal is heard finally on merit.

In the case of *Banesingh* (supra), the Supreme Court, in para 16 has observed as under:-

"Such a view can bring about a stalemate situation. The appellant and his lawyer can remain absent with impunity, not once but again and

again till the Court issues a warrant for the appellant's presence. A complaint to the Bar Council against the lawyer for non-appearance cannot result in the progress of the appeal. If another lawyer is appointed at State cost, he too would need the ;presence of the appellant for instruction and that would place the Court in the same situation. Such a ;procedure can, therefore, prove cumbersome and can promote indiscipline. Even if a case is decided on merits in the absence of the appellant, the higher Court can remedy the situation if there has been a failure of justice. This would apply equally if the accused is the respondent for the obvious reason that if the appeal cannot be disposed of without hearing the respondent or his lawyer, the progress of the appeal would be halted."

3. According to the prosecution case on 08.01.91, the complainant Nanuram along with his friends Chandika Pratap (PW-2) and Abhay Kumar (PW-3) was going in the evening at 4.30 PM from Julvaniya road towards Bhilatkheda. At that moment, the appellant reached to them and abused Chandika Pratap in the name of his mother and while delivering threats to finish him, took out a knife from his pocket and struck two knife-blows causing injuries in his abdomen. Anil Kumar intervened and separated them. In spite of this intervention, the appellant dealt third blow causing injury on the head of Chandika Pratap. During the course of rescuing, Anil Kumar also sustained injuries by knife. The appellant fled away from the place of occurrence with knife. Nanuram (PW-1) lodged the report Ex.P/1 on the same day at 5.00 PM. Police stepped into investigation and prepared the spot map. The appellant was nabbed on 09.01.91 and on his disclosure statement, knife was seized. After completion of investigation, the appellant was charge-sheeted for the aforementioned offence. It is worthwhile to mention here that the charge-sheet was filed against Anil also but but he has been discharged by the learned trial Court at the stage of framing of charge by order dated 22.08.91.

4. The appellant denied the charge and examined DW1 Anil Kumar and DW-2 Nuru. According to the defence witnesses, Nanuram, Abhay Kumar and Chandika Pratap were having chain, knife and pistol respectively. They all started assaulting the appellant Arshad. On intervention by DW-1 Anil Kumar, the complainant and his companions ran away. The appellant did not cause any injury by knife to Chandika Prasad. The learned trial Court, on conclusion of trial and hearing both the parties, convicted and sentenced the appellant as indicated herein-above.

5. Having heard learned counsel for the State and after perusing the entire record as well as memo of appeal, this Court does not find any substance in this appeal.

6. PW-1 Nanuram has deposed that on the date of incident in the evening at

4.30 PM, he himself, PW-3 Abhay and PW-2 Chandika Pratap were on walking on Julvaniya road. At that juncture, the appellant reached over there and abused them filthily in the name of mother and sister of Chandika Pratap and also took out a knife from his pocket to assault him. The appellant inflicted two knife blows causing injuries on his abdomen. Chandika Pratap sustained one injury at left side and second at right side of the abdomen. This witness and Anil tried to intervene, even then, the appellant inflicted third blow on the head of Chandika Pratap. During the course of rescuing Chandrika Pratap, Anil also sustained injury at his hand. According to this witness Nanuram, eight to ten days prior to the incident, there was some sort of verbal quarrel between the appellant and PW-3 Abhay Kumar and in that quarrel, Chandika Pratap admonished , the appellant because of which, the appellant assaulted Chandika Pratap. The further say of this witness is that Chandika Pratap became unconscious., He was taken to the hospital and he lodged the report Ex.P/1. Chandika Pratap was referred from Rajpur Hospital to Barwani Hospital for treatment. In cross-examination, he denied the defence suggestion that on account of dispute on cricket game, they went to beat the appellant Arshad having revolver, chain and knife. He also denied that they threatened the appellant and were pacified by Nuru and Babulal. He also denied that PW-3 Abhay wielded the knife which caused injuries to Anil and during the course of scuffle between the appellant and Abhay, Chandika Pratap sustained injuries. He expressed his ignorance about lodging of any report by the appellant against them. In cross-examination of this witness, nothing substantial has come out which may attach vulnerability to his testimony. Neither the appellant filed any report lodged by him regarding the incident as suggested nor did he suffer any injury during the course of incident.

7. PW-2 Chandika Pratap, the victim has also stated almost all the same thing against the appellant. According to him, on account of dispute over cricket game before eight days, the appellant got annoyed and assaulted him by knife on the date of incident causing two injujries on his abdomen and even after intervention by Anil and PW-1 Nanuram, the appellant dealt third blow by knife on his head. He was admitted in Barwani hospital and remained hospitalized there for 15 days as an indoor patient. In cross-examination, he accepted the defence suggestion that the appellant was playing in their team and there was a quarrel on cricket ground between the appellant and Abhay (PW-3) in Rajpur town. In cross-examination, he denied the defence suggestion that at many times quarrel took place between the appellant and Abhay and because of inimical terms, he along with Abhay and Nanuram had gone to assault the appellant at his house.

8. It would be apposite to mention here that neither the appellant filed any report nor any medical report if he was assaulted by the complainant party as suggested in cross-examination. He also denied that the witness Abhay dealt a knife blow which caused injury to Anil and said that Anil sustained injury on his intervention and he sustained injury while snatching the knife from the appellant.

Chandika Pratap (PW-2) has expressed his ignorance regarding lodging of any report by the appellant and denied the defence suggestion that the appellant was sitting at the flour mill of Anil and he was called by them. In cross-examination of this witness also no material omission, improvements or contradictions are brought on record. His statement is fully corroborated by the statement of PW-1 Nanuram. The version of injured Chandika Pratap is also fully corroborated by the statement of PW-3 Abhay Kumar who de;posed that when they were going on walk, the appellant abused Chandkka Pratap and assaulted him by knife causing two injuries on abdomen and even on intervention, the appellant gave third blow causing injury on his head. In cross-examination, he admitted about verbal quarrel with the appellant on cricket ground before eight days and in the said quarrel, Chandika Pratap favoured this witness Abhay and admonished the appellant on which the appellant told him not to interfere between them and he would see Chandika Pratap in future. He also denied the defence suggestion about making attack by him, PW-1 Nanuram and PW-2 Chandika Pratap by knife, cycle-chain and revolver.

9. The statement of injured Chandika Pratap (PW-2) is fully corroborated by Dr PW-5 R.S. Tomar who had examined him and found one penetrating injury on right hypochondrium, second penetrating injury over left hypochondrium and third incised injury on right parietal region of scalp. Dr Tomar gave primary treatment and referred him for X-ray Examination. He proved his MLC report Ex.P/3. Dr Tomar also proved the injury sustained by Anil vide MLC report Ex.P/4. It is pertinent to mention here that all the three witnesses have specifically stated that when Anil intervened into quarrel, he also sustained injuries at the hand of the appellant and this fact is also mentioned in the First Information Report Ex.P/1. The knife seized from the appellant was shown to Dr Tomar in Court and Dr Tomar opined that these injuries could be caused by this knife to Chandika Ptratap. He proved the query report Ex.P/5 . There is no conflict between the medical evidence as well as the eye witnesses account.

10. PW-6 Rajendra has proved the seizure of knife and arrest of the appellant vide Ex.P/5\6 and P/7. In cross-examination he denied the defence suggestion that the documents were already written prior to his reaching at the Police Station. PW-7 Girish turned hostile. He was the witness regarding quarrel taken place between the appellant and Chandika Pratap in Rajpur. He was confronted with his case-diary statement Ex.P/8. The statement of this witness is of no avail to any of the parties.

11. PW-8 Balwant was the eye witness, but he did not support the prosecution case, therefore, he was declared hostile and was confronted with his case-diary statement Ex.P/9. PW-9 Dr Kailash Malviya proved the X-ray report and X-ray plate Ex.P/10 and P/11 respectively. PW-10 Dr Dattatray Sangle was on emergency duty in the District Hospital at Barwani. He had examined the injured

PW-2 Chandika Pratap and had given him glucose saline. PW-11 Dr Madan Mohan Mody was the in-charge of the ward and was treating the patient Chandika Pratap. Dr Mody proved Bed Head Ticket Ex.P/12 of Chandika Pratap. This surgical specialist has deposed that on examination of Chandika Pratap he found one incised wound on right hypochondrium and second incised wound on left side of hypochondrium region of abdomen. Both wounds were bleeding. Omen tum was protruding from left hypochondriunm region. After medically examining the patient, he opined for operation and also operated Chandika Pratap. On operation, he found injury to liver to gal bladder and abdomen. One hole was also detected in the large intestine. His abdomen was containing bilious bumour. In magacolon area of large intestine there was a cut. All these injuries were operated upon by this doctor. According to Dr Mody, Chandika Pratap was admitted in the hospital on 08.01.91 and was discharged on 20.01.91. He also proved his notes as well as the signatures on Bed Head Ticket Ex.P/12. Ex.P/13 is the reply to query by this witness given to police and in his opinion, the injuries were sufficient in ordinary course of nature to cause death.

12. PW-12 Mahendrea has proved the memorandum statement of appellant Ex.P/14 with regard to knife which was seized by the police at the instance of the appellant through seizure-memo Ex.P/15. But, in cross-examination, he has stated that for recovery of knife, he had not gone with the police at the house of the appellant and knife was already lying in the Police Station. In this view of the matter, the evidence of this witness about recovery of knife is of no assistance.

13. PW-13 R.C. Solanki, Town Inspector has proved the First Information Report Ex.P/1 lodged by PW-1 Nanuram and other steps taken by him in investigation of the crime. His statement has not been challenged in cross-examination by the appellant and defence suggestion is denied by this witness that the appellant himself had come to the Police Station with a knife.

14. The defence has examined DW-1 Anil and DW-2 Nuru. Both have given different story than the prosecution case. According to them PW-1 Nanuram, PW-2 Chandika Pratap and PW-3 Abhay came towards his flour-mill . At that time DW-2 Nuru was also with him. Witness Abhay called the appellant and also abused him. Thereafter, all the three assaulted the appellant by cycle-chain, knife and pistol. He separated them and while doing so,, he sustained injuries by knife. This is true that this witness sustained injury in the same incident and this fact is mentioned in the First Information Report Ex.P/1, but his version as also the version of defence witness Nuru are not corroborated by any report lodged by both these witnesses or by the appellant. No medical report is filed by the appellant to substantiate his version and no such suggestion was given to the Investigating Officer PW-13. Burden on defence is not as onerous as on the prosecution to prove its case, but merely giving suggestion to witnesses and examining the defence witnesses, the version of defence would not be accepted unless it is substantiated

and corroborated by material particulars. In absence of any report lodged by the appellant or defence witnesses and medical report sustaining injury by the appellant, simply ipse dixit of defence would not be accepted.

15. The appellant was having ill-will with the victim Chandika Pratap. They had quarrel before eight days on cricket ground and thereafter, with the deadly weapon like knife the appellant caused serious injuries on abdomen of Chandika Pratap. He dealt third blow even after intervention by Anil causing injury on head, are sufficient circumstances to establ;ish that he had intention to commit murder of Chandika Pratap and with such intention he caused injuries to him and if Chandika Pratap would have died, the appellant would have been liable for commission of culpable homicide amounting to murder. PW-12 Operating Surgeon Dr Mody has specifically opined that the injuries were sufficient in the ordinary course of nature to cause death.

16. In this view of the matter, this Court is in full agreement with the learned trial Court that the appellant has committed the offence of attempt to commit murder punishable under section 307 of the Indian Penal Code. (See: *Bipin Bihari V/s State of M.P.* [(2007 (Vol. I) SCC (Cri) 25)] and *Laxmansingh V/s State of Haryana* [(2007(Vol.I) SCC (Cri) 123)].

17. As a result of the discussion as aforesaid, this Court does not find any merit in this appeal. It is accordingly dismissed. The impugned judgment of conviction and sentence is hereby affirmed. The appellant is on bail. He is directed to surrender to his bail bonds before the trial Court on 12.05.08 and upon his surrender, the trial Court shall send him to jail for serving out the remainder p;art of his sentence. On failure of the appellant to appear and surrender before the trial Court on the specified date, the trial Court shall take suitable action against the appellant and his surety in accordance with law under intimation to this Court.

Appeal dismissed.

I.L.R. [2008] M. P., 3284
APPELLATE CRIMINAL
Before Mr. Justice R.C. Mishra
17 March, 2008*

PRAHLAD TANWANI ... Appellant
Vs.
STATE OF M.P. ... Respondent

A. Penal Code (45 of 1860), Section 306 - *Nature of death - Suicidal or incidental - There is no evidence to suggest that at any point of time, preceding her death, deceased had raised alarm or attempted to save herself while burning - Plastic cane, stove, lantern, match box, match stick and burned clotheing found at the spot - Dead body found lying in kitchen near oven -*

*Cr.A. No.1351/1996 (Jabalpur)

Kitchen was found closed from inside - No dispute either in the cross-examination or examination u/s 313 of Cr.P.C. was raised as to circumstances prevailing on the spot - Availability of carbon particles in the trachea was indicative of the fact that the burn injuries were ante-mortem in nature - In the light of these facts & circumstances coupled with the opinion of medical as well as forensic experts, it was proved beyond reasonable doubt that the nature of death was neither homicidal nor incidental but was suicidal in nature. (Paras 10, 11 & 12)

क. **दण्ड संहिता (1860 का 45), धारा 306 – मृत्यु की प्रकृति – आत्मघाती या दुर्घटनावश** – ऐसा कोई साक्ष्य नही है जो यह सुझाता हो कि मृतक ने मृत्यु के पूर्व, जब वह जल रही थी, संकट सूचना दी हो या स्वयं को बचाने के लिए कोई प्रयत्न किया हो – प्लास्टिक केन, स्टोव, लालटेन, माचिस, माचिस की तीलियाँ और जले हुए कपड़े घटना स्थल पर पाये गये – शव किचिन में चूल्हे के पास पड़ा पाया – किचिन अंदर से बंद था – घटना स्थल पर जो परिस्थितियाँ थी उसके सम्बन्ध में प्रतिपरीक्षण में या द.प्र.सं. की धारा 313 की परीक्षा में कोई विवाद नही उठाया – श्वासनली (trachea) में कार्बन के कणों की उपलब्धता यह इंगित करती है कि जलने की क्षतियाँ मृत्यु पूर्व की प्रकृति की थीं – इन तथ्यों और परिस्थितियों के आलोक में चिकित्सीय और न्यायालयीन विशेषज्ञों की राय से शंका से परे यह सिद्ध है कि मृत्यु की प्रकृति न तो मानव वध थी और न ही दुर्घटनावश बल्कि आत्मघाती प्रकृति की थी।

B. Penal Code (45 of 1860), Section 498-A - *Cruelty* - *Penal provision of Sec. 498-A inserted by way of Criminal Law (Second Amendment) Act, 1983 w.e.f. 25.12.1983 - The instances prior to introduction of Sec. 498-A cannot be taken into account for ascertaining the corresponding liability.* (Para 14)

ख. **दण्ड संहिता (1860 का 45), धारा 498–ए – क्रूरता** – धारा 498–ए के दाण्डिक उपबंध आपराधिक विधि (द्वितीय संशोधन) अधिनियम, 1983 के द्वारा अंतःस्थापित जो 25.12.1983 से प्रभावशील – धारा 498–ए की पुरःस्थापना के पूर्व के अवसर तत्संबंधी दायित्व अभिनिश्चित करने के लिए विचार में नही लिये जा सकते।

C. Evidence Act (1 of 1872), Section 32(1), Penal Code, 1860, Section 306 - *Law is well settled on the point that even in a case of suicide, letters written by the deceased which are directly connected with or related to death in question would fall within four corners of Section 32 of the Act - Letters written by the deceased to her elder brother were rightly admitted in evidence as statements relating to circumstances culminating into her death.* (Para 17)

ग. **साक्ष्य अधिनियम (1872 का 1), धारा 32(1), दण्ड संहिता, 1860, धारा 306** – इस बिन्दु पर विधि सुस्थापित है कि आत्महत्या के मामले में भी, मृतक द्वारा लिखे गये पत्र, जो प्रत्यक्षतः प्रश्नगत मृत्यु से सम्बद्ध या सम्बन्धित हैं, अधिनियम की धारा 32 की परिधि में आयेंगे – मृतक द्वारा अपने बड़े भाई को लिखे गये पत्र, उसकी मृत्यु की परिस्थितियों की चरम सीमा से सम्बन्धित कथनों के रूप में साक्ष्य में उचित रूप से ग्रहण किये गये।

D. Evidence Act (1 of 1872), Section 8, Penal Code, 1860, Sections 498-A, 306 - *Cruelty* - *Letters written by deceased to her brother - A bare reading of these letters would reveal that deceased had been persistently subjected to physical & mental torture during the corresponding period - Last letter that appears to have been written a few days before the incident in question, the appellant was referred to as a Neech (mean) and Gira Hua (degraded) person whereas in earlier letter she had expressed intention to commit suicide - Genuineness of none of these letters was challenged specifically by the appellant at any stage of trial - Cruelty proved.* (Para 16)

घ. **साक्ष्य अधिनियम (1872 का 1), धारा 8, दण्ड संहिता, 1860, धाराएँ 498–ए, 306** – क्रूरता – मृतक द्वारा अपने भाई को पत्र लिखे गये – इन पत्रों को पढ़ने से ही यह प्रकट होता है कि मृतक को तत्सम्बंधी कालावधि के दौरान बार–बार शारीरिक और मानसिक यातना दी गई – अंतिम पत्र जो घटना के कुछ दिन पूर्व ही लिखा जाना प्रतीत होता है, में अपीलार्थी को नीच और गिरा हुआ व्यक्ति संदर्भित किया गया जबकि पूर्व के पत्र में उसने आत्महत्या करने का इरादा प्रकट किया था – इन पत्रों में से किसी की प्रमाणिकता को विशिष्ट रूप से अपीलार्थी द्वारा विचारण के किसी भी प्रक्रम पर चुनौती नही दी गई – क्रूरता साबित।

E. Penal Code (45 of 1860), Section 306 - *Abetment to commit suicide* - *Prosecution has to establish prima facie case in the first instance, yet it is not of the law of the country that the prosecution has to eliminate all possible evidences and circumstances which may exonerate accused - If those facts are within the knowledge of accused then he has to prove them - Non-explanation of circumstances during the period intervening appellant's return from Bhopal and ultimately death of his wife was the strongest possible circumstance to discredit the defence version.* (Para 36)

ङ. **दण्ड संहिता (1860 का 45), धारा 306** – आत्महत्या करने का दुष्प्रेरण – अभियोजन को प्रथम अवसर पर प्रथम दृष्ट्या मामला स्थापित करना होता है, इसके अलावा यह देश की विधि नही है कि अभियोजन को सभी संभव साक्ष्य और परिस्थितियों को हटा देना चाहिए जो अभियुक्त को दोषमुक्त कर सकती हैं – यदि वे तथ्य अभियुक्त की जानकारी में हैं तब उसे उन्हें साबित करना होता है – अपीलार्थी के भोपाल से लौटने के बाद से और अंततः उसकी पत्नी की मृत्यु होने के मध्य की कालावधि के दौरान की परिस्थितियों को स्पष्ट न करना प्रतिरक्षा के कथन पर अविश्वास करने के लिए प्रबल संभाव्य परिस्थिति थी।

F. Penal Code (45 of 1860), Section 306 - *Abetment to commit suicide* - *There is no material on record to suggest that deceased was hypersensitive to ordinary petulance - On the contrary, tenure of the letters written by her was sufficient to indicate her maturity in understanding the complexity of an unhappy domestic life - Appellant was rightly held guilty of abetting commission of suicide by his wife.* (Para 39)

च. **दण्ड संहिता (1860 का 45), धारा 306** – आत्महत्या करने का दुष्प्रेरण

– यह सुझाव देने के लिए अभिलेख पर कोई साक्ष्य नही कि मृतक साधारण चिड़चिड़ेपन के प्रति अतिसंवेदनशील थी – इसके विपरीत, उसके द्वारा लिखे गये पत्रों की अवधि दुखी घरेलू जीवन की मनोवृत्ति को समझने में उसकी परिपक्वता इंगित करने के लिए पर्याप्त थी – अपीलार्थी को उसकी पत्नी को आत्महत्या के लिए दुष्प्रेरित करने का उचित रूप से दोषी ठहराया गया।

Cases referred :

AIR 1989 SC 378, AIR 2001 SC 2828, (2002) 5 SCC 177, 1989 CrLJ 242, AIR 1984 SC 1622, (2004) 9 SCC 431, AIR 1981 SC 911, (1994) 1 SCC 73, 1995 CrLJ 2127, (2002) 2 SCC 73, AIR 2000 SC 297, (2005) 5 SCC 207, (1950) 2 All.ER 458, 1995 Supp (1) SCC 547, AIR 2002 SC 4664.

Ashok Lalwani, for the appellant.

Ramesh Shukla, Dy.G.A., for the respondent/State.

JUDGMENT

R.C. MISHRA, J. :–This appeal has been preferred against the judgment dated 12/8/1996, passed by IIIrd Additional Sessions Judge, Chhindwara in Sessions Trial No.90/89 convicting and sentencing the appellant as under with a further direction that the custodial sentences shall run concurrently :-

Convicted under Section	Sentenced to
498-A of the IPC	undergo R.I. for one year and to pay fine of Rs.1000/- in default, to suffer R.I. for six months..
306 of the IPC	undergo R.I. for 4 years and to pay fine of Rs.2000/- in default, to suffer R.I. for six months

2. The following facts are not in serious dispute:-

(a) Kalawati was the maiden name of the deceased. Her parental home was situated at Bairagarh, a suburb of Bhopal (M.P.). She was the real sister of Moolchand (PW13), Chandra Prakash (PW15) and Late Shobhraj, the husband of Lajwanti (PW14). Her marriage was solemnized with the appellant, a resident of Bhatapara, District Raipur (now in C.G.) on 29/1/1981 and, at the matrimonial home her name was changed as Kanta. In the wedlock, a son, named as Shailesh, was born. He was about five years of age at the time of his mother's untimely death.

(b) Initially, the appellant was in a private job. After marriage, he was selected by Public Service Commission for appointment to the State Accounts Service. At the relevant point of time, he was posted as Accounts Officer at Chhindwara, where he was residing in a Government Bungalow with his wife, son and younger brother Ravi (DW5). In one of its rooms, earmarked for use as kitchen, dead body of Kalawati @

Kanta (hereinafter referred to as 'Kanta') was found lying in a severely burnt condition on 11/1/1989. The appellant, who had returned from Bhopal a few hours before the death of Kanta, was inside the bungalow at the time of the occurrence.

3. Prosecution story, in short, may be narrated as under:

(i) Soon after entering into matrimonial relationship with Kanta, the appellant started subjecting her to torture and harassment on one pretext or the other. Eventually, in the year 1984, Kanta, while declining to return to her matrimonial home, continued to reside at her brother's house at Bairagarh for a considerable period. It was after obtaining an undertaking, duly executed on a stamp paper by the appellant, to lead a congenial marital life with her that Kanta's brothers agreed to send her back to her in-laws house at Bhatapara. But, even after the undertaking, the appellant failed to show any improvement in his cruel behaviour. In turn, Kanta also continued to inform his elder brother Shobhraj about the ill-treatment meted out to her by writing letters from time to time. However, in his correspondence with Shobhraj only, the appellant, while tendering apology for his past misdemeanors, used to assure that he would not provide any future cause of complaint as to the domestic violence. However, the strains in matrimonial relationship continued to exist for another prolonged period. Ultimately, on 11/1/1989, Kanta was found dead in a severely burnt condition at the time when the appellant was present in the nearby room of his official residence.

(ii) C.S. Narula (PW7), one of the neighbours, who rushed to the spot after hearing hue and cry raised by the appellant, informed the police accordingly. Thereupon, Marg was registered at P.S. Chhindwara. During inquiry, Deputy Superintendent of Police R.S.Tiwari (since dead) inspected the spot; seized a plastic can; one wick stove; a matchbox soaked in kerosene; one lantern with its lid lying at a distance; one hasp of the door with two screws, and pieces of burnt clothes including rear part of Kanta's brassier therefrom.

(iii) During inquiry, certain letters addressed to Shobhraj and written by Kanta, the appellant and his brother Ramesh, indicating that she was harassed and tortured by the appellant during the corresponding period were also seized.

(iv) After inquest proceedings, dead body of Kanta was sent for post-mortem. It was performed by a team of doctors comprising of Dr. S.S. Nadkar and Dr. A.M. Verma. In their opinion, shock on account of extensive burns was the cause of Kanta's death. In the light of these background facts and circumstances, on 19/1/1989 Inspector M.S. Farooqui proceeded to register a case, under Sections 498A and 306 of the IPC at P.S. Chhindwara.

(v) During investigation, copy of the deed of undertaking and specimen handwriting of the accused/appellant available on certain leave applications were also seized and were referred to the Govt. Examiner of Questioned Documents for opinion. He found that the letters containing confessions were written to Shobraj by none other than the appellant himself.

4. On being charged with these offences, the appellant pleaded not guilty and claimed to be tried. In the examination, under Section 313 of the Code of Criminal Procedure (for short 'the Code'), he further denied to have written the questioned letters (Ex.P-30 to P-36). However, the contents of post-mortem report (Ex.P-3) were admitted by the defence.

5. To bring home the charges, prosecution examined as many as 16 witnesses including brothers Moolchand (PW13) & Chandra Prakash (PW15) and Bhabhi (sister-in-law) namely Lajwanti (PW14) of the deceased. The appellant also produced 5 witnesses including his younger brother Ravi Tanvani (DW5), cousin Murlidhar (DW2) and brother-in-law Bhishmadas (DW3) in evidence.

6. Taking into consideration the entire evidence, the learned trial Judge, for the reasons recorded in the judgment under challenge, came to the conclusion that the appellant was not only guilty of cruelty as defined in Section 498A of the IPC but had also abetted the commission of suicide committed by his wife. He, accordingly, convicted and sentenced him as indicated hereinabove.

7. Legality and correctness of the impugned convictions have been assailed on various grounds. However, the learned Deputy Govt. Advocate, while making reference to the incriminating pieces of evidence available on record, has contended that the convictions in question are well-merited. It is relevant to note that the documentary evidence on record comprises of 74 documents in all. Further, as pointed out already, this Court is also required to re-appreciate oral evidence of as many as 21 witnesses. It would, therefore, be more appropriate and convenient to examine the rival contentions under the corresponding sub-heads in the following manner :

Nature of Kanta's death

As indicated already, the contents of the post-mortem report (Ex.P-3), prepared by a team of doctors comprising of Dr. S.S. Nadkar and Dr. A.M. Verma, were admitted. The relevant extracts may be reproduced as under:

"Body of female, moderate built, 26 years F, Pugilistic attitude, Rigor mortis present all over body, Nails pale, both eyes slightly open, tongue protruded and in between teeth, burnt clothing over trunk, kerosene oil smell present.

Following ante mortem burns seen on the body.

Except dorsal and plantar aspect of feet, all body surface extensively burnt. Gr.III and Gr.II burn, more market over upper portion of body,

hairs of scalp burnt, /torn/ on the occipital area, blackish sooty present on the head & trunk and upper arm, both side, right ears (pinna totally burnt), white left pinna burn with earrings. Red lining present over few places in upper and lower limb, tongue burnt (Black in colour)."

Internal examination :

Cranium and spinal canal		
Scalp, skull and vertebrae	:	N
Membrane	:	Congested
Brain	:	Congested
Thorax		
Walls, ribs and cartilages : described.		Burnt, are already
Pleura	:	Congested
Larynx and trachers	:	Congested and contain live blackish sooty particle.
Right lung	:	Congested
Left lung	:	Congested.
Percareium	:	NAP
Heart	:	Full ventricle empty.
Large Vessals	:	-
Abdomen		
Walls	:	Burnt, already described.
Peritonium	:	-
Mouth and oesophagus Pharynx.	mentioned earlier	
Stomach and its contents	:	containing liquid material, about 100 ml.
Small intestine and its contents.	:	marus liquid.
Large intestine and its contentnts.	:	fecal matter & gasses.
Liver	:	congested
Spleen	:	Congested
Kidneys	:	Congested.
Organs of generation external and internal.	:	Healthy non gravid.

Cause of death is due to shock on account of extensive burns.

8. The autopsy report further indicated that the pieces of burnt skin from left upper arm, left thigh, burnt clothing and scalp hairs, chappals, earrings, glass bangles and ring found in the middle finger, were also preserved along with viscera for forensic examination. However, corresponding report of the Forensic Science Laboratory, Sagar reflects that the viscera was not found to contain any chemical poison and also that the other articles including the pieces of burnt skin were not analyzed by the Forensic Expert.

9. Learned counsel for the appellant, while placing reliance on the decisions of the Apex Court in *Wazir Chand vs. State of Haryana* AIR 1989 SC 378 and *Satvir Singh vs. State of Punjab* AIR 2001 SC 2828, has strenuously contended that no offence under Section 306 of the IPC was made out against him as the factum of suicide was not established from the expert evidence.

10. It is true that the panel of autopsy surgeons had not given any definite opinion as to the nature of death but the availability of carbon particles in the Trachea was indicative of the fact that the burn injuries were ante-mortem in nature. There is no evidence to suggest that at any point of time, preceding her death, Kanta had raised alarm or attempted to save herself while burning.

11. Incidentally, no dispute, either in the cross-examination or examination under Section 313 of the Code, was raised as to circumstances prevailing on the spot. These circumstances were vividly reflected in the Inquest Panchnama (Ex.P-1) that was proved by panch witnesses Gaya (PW3) and Virendra Singh (PW12) and also in the seizure memo (Ex.P-4 and Ex.P-5), contents of which were duly proved by the panch-witnesses Mohan Lal (PW4) and Harish Chand Saxena (PW5). The seizure lists contained description of the articles viz. plastic can, stove, lantern, match box, burnt clothing and match sticks found at the spot and the Inquest Panchnama (Ex.P-1) delineated their respective locations relative to dead body of Kanta that was found lying in kitchen-room near oven. As reflected in the Inquest Panchnama, her tongue was protruding and the western and northern wall of the kitchen had blackened due to smoke. It also came in the evidence of neighbours namely C.S. Narula (PW7) and Ashok Kumar Shivhare (PW2) that the room in which Kanta's dead body was lying was found closed from inside.

12. In the light of these facts and circumstance, coupled with the opinion of the medical as well as the forensic experts, the theory of accident as propounded by the defence was rightly rejected by the learned trial Judge. In other words, it was proved beyond a reasonable doubt that the nature of death of Kanta was neither homicidal nor incidental but was suicidal in nature.

Cruelty

13. Before proceeding to re-appraise the prosecution evidence on the point of cruelty, it is to be borne in mind that charges under Sections 306 and 498A of the IPC are independent of each other *Giridhar Shankar Tawade vs. State of*

Maharashtra (2002) 5 SCC 177 referred to). Explaining the difference between Section 498A and 306 of the IPC, this Court in *Girijashankar vs. State of M.P.* 1989 Cri.L.J. 242 has held that the difference is that of intention. Under Section 498A of the IPC, the cruelty is committed by the husband and his relations dragging the woman to commit suicide, while under Section 306 of the IPC, suicide is abetted and intended.

14. However, in the case on hand, the instances prior to introduction of Section 498A of the IPC cannot be taken into account for ascertaining the corresponding liability in view of the fact that penal provision, inserted by way of Criminal Law (Second Amendment) Act of 1983, was brought into force w.e.f. 25/12/1983.

15. The prosecution sought to prove the past instances of cruelty by leading oral as well as documentary evidence. The documentary evidence comprised of (1) letters (Ex.P-12, P-15, P-20, P-23, P-24, P-25 and P-26) said to have been written by Kanta to his brother Shobhraj (2) letters addressed to Shobhraj, Kanta and Shaillesh, allegedly scribed by the appellant himself (Ex.P-30 to P-36) and (3) photocopy of the deed of undertaking (Exhibited twice as P-11 and P-29). Corresponding covering memo (Ex.P-21) and letter (Ex.P-22) said to have been written by his younger brother Ramesh. The fact that these documents were seized from the possession of Shobhraj was duly proved by the panch witnesses namely Mirchumal (PW8) and Bhajanlal (PW9) by corroborating the contents of corresponding seizure memo (Ex.P-16 and Ex.P-17 respectively). Nothing significant could be elicited in their cross-examination.

16. The assertion made by Lajwanti (PW14) and corroborated by her brothers-in-law Moolchand (PW13) and Chandra Prakash (PW15) that Kanta used to reflect trauma and agony suffered by her by writing letter to Shobhraj only. Genuineness of none of these letters was challenged specifically by the appellant at any stage of trial. A bare reading of these letters (Ex.P-12, P-15, P-20 and P-23 to P-26) would reveal that Kanta had been persistently subjected to physical and mental torture during the corresponding period. It is relevant to note here that in the last letter (Ex.P-26) that appears to have been written a few days before the incident in question, the appellant was referred to as a neech (mean) and Gira Hua (degraded) person whereas in an earlier letter (Ex.P-25) she had expressed intention to commit suicide.

17. Law is well settled on the point that even in a case of suicide, letters written by the deceased which are directly connected with or related to death in question would fall within four corners of Section 32 of the Indian Evidence Act (See *Sharad Biridhichand Sarda vs. State of Maharashtra* AIR 1984 SC 1622). Accordingly, the letters written by Kanta to her elder brother Shobhraj were rightly admitted in evidence as statements relating to circumstances culminating into her death.

18. Although, the appellant did not admit that the letters (Ex.P-30 to P-35) were

written by him only yet, his denial was falsified by a contrary opinion given by H.S. Tomar (PW16), the Govt. Examiner of Questioned Documents. The corresponding report (Ex.P-17) clearly reflects that the opinion was based on a scientific analysis of data obtained by comparing the questioned handwriting and signatures with specimen handwriting and signatures as available in the leave applications (Ex.P-7 and P-10) submitted by the appellant in his office and the copies of the questioned letters and other documents (Ex.P-37 to Ex.P-72) prepared by him.

19. Thus, from the evidence of the handwriting expert, it was clearly established that the questioned letters (Ex.P-30 to P-35) were authored by the appellant only. Amongst these letters, the one addressed to Shailesh (marked as Ex.P-36) reflected his intention to take custody of child after a certain period; the letters addressed to Kanta (Ex.P-34 and Ex.P-35) contained admission regarding excesses on his part whereas the letters written to Shobhraj (Ex.P-30, P-31, P-32 and P-35) on 15/10/1989, 31/10/1989 and 26/03/1985 respectively speak about events of maltreatment leading to a separate living of Kanta and persistent decline of her brother Shobhraj to send her back to matrimonial home. The last of the letters (Ex.P-35) not only contained admission of certain Galtiyan (mistakes) but also a threat to dissolve the marriage, in case Kanta was not sent to her matrimonial home with Ramesh.

20. It is true that photocopy of the deed of undertaking (Ex.P-29) is the secondary evidence of contents of the original, which, as per the prosecution version, was submitted by Ramesh before Shobhraj with a covering memo (Ex.P-21). There was yet another document scribed by Ramesh in the form of an inland letter (Ex.P-22) acknowledging that Kanta was subjected to atrocities by his brother viz. the appellant. It is relevant to note that out of these documents, only copy of the deed of undertaking was forwarded to the Examiner of Questioned Documents. However, the expert viz. H.S. Tomar (PW16) had refused to give any opinion on the ground that it was not an original document. Although, Moolchand (PW13), after reiterating the assertion as made in his case diary statement (Ex.D-1) that the original deed of undertaking was returned to the appellant disclosed that her brother Shobhraj had drafted another undertaking on a stamp, that was in his possession only yet, as explained by him, Shobhraj had agreed to send Kanta back to appellant's house only upon the deed of undertaking ultimately executed by the appellant brought by Ramesh.

21. In such a situation, Ramesh, the younger brother of the appellant, would have been the best witness to say that no such deed existed. However, the defence preferred not to examine him. The non-examination of Ramesh as the most material witness, for disproving the existence of deed of undertaking was a significant circumstance against the appellant. Taking note of these facts, the learned Judge did not commit any illegality in admitting the photocopy of the deed in evidence. Even a contrary view would not assume any significance as there was other

overwhelming documentary evidence on record to indicate that the matrimonial relationship between the appellant and his wife had continued to remain strained for a considerable period preceding the incident in question.

22. Shobhraj, the elder brother of the deceased, expired before being examined as a prosecution witness in the case. However, not only his wife Lajwanti (PW14) but also younger brothers Moolchand (PW13) and Chandra Prakash (PW15) duly substantiated the allegations pertaining to cruelty, as communicated by the deceased from time to time to Shobhraj. The specific instances of cruelty as described by them may be summed up as under :-

(i) In the year 1983, during a quarrel that ensued over a tooth-brush, the appellant had beaten Kanta in his in-laws house at Bairagarh, where he had come to attend marriage of her younger brother namely Govind.

(ii) On the festive occasion of Raksha Bandhan in 1984, the appellant did not allow Kanta to tie Rakhi on wrist of her brother Moolchand (PW13), who had gone to Bhatapara to celebrate the festival.

(iii) In the year 1985 only, Kanta was forced to leave company of the appellant at Gondia near Nagpur where she had come along with the appellant to participate in a wedding ceremony and, further, she was compelled to travel in a Bhopal-bound train without ticket and was also not allowed to wear chappals.

23. However, evidence of these close relatives of the deceased suffered from embellishments. For example, the allegations to the effect that after denuding her or for compelling her to bring more money from her brothers do not find place in their corresponding police statements (Ex.D-2, D-1 and D-3 respectively). Inviting attention to these improvements made by brothers and sister-in-law of Kanta in their statements on oath, learned counsel for the appellant has submitted that their evidence was not acceptable in view of the fact that none of the letters contained reference to any dowry demand. To fortify the argument, reliance has been placed on the ratio laid down by the Apex Court in *Ashok Vishnu Daware vs. State of Maharashtra* (2004) 9 SCC 431. However, in that case, the statements regarding harassment also were too general. Further, as pointed out by the Supreme Court in *Sharad's case* AIR 1984 SC 1622 (supra), the related witnesses have a tendency to exaggerate or add facts and their evidence should be examined with great care and caution to find out whether what they had stated was true or not. Thus, mere relationship or improvement, by itself, would not be sufficient to discard entire testimony of a closely related witness whereas in the case on hand, corresponding testimony of the related witnesses was corroborated in material particulars from the documentary evidence on record. In this view of the matter, the learned trial Judge, while discharging the solemn duty of separating the grain from the chaff, rightly accepted the wholly reliable part of the statements of the brothers and sister-in-law of Kanta.

24. Adverting to the specific instances of cruelty, it may be seen that the tooth-brush related incident, though not relevant for the purpose of determining the penal liability for the offence under Section 498A of the IPC, that was introduced at a later point of time, was an eye-opener for the relatives of Kanta, who had hitherto only heard about the maltreatment and torture meted out to her.

25. Moolchand (PW13) corroborated the facts relating to the incident that occurred on the festival of Raksha Bandhan in 1984 at Bhatapara. According to him, the appellant had not allowed Kanta to tie Rakhi around his wrist and, in such a situation, Rajee, wife of appellant's cousin Murlidhar (DW2), who being related as sister, had tied the sacred thread of Rakhi on his hand. Although, Murlidhar (DW2) asserted that no such occasion has arisen yet, he clearly admitted that Moolchand had come to Bhatapara on the eve of Raksha Bandhan in 1984. There can not be any conflict with the proposition that defence witnesses are entitled to equal treatment with those of the prosecution (*Dudh Nath Pandey vs. State of U.P* AIR 1981 SC 911 referred to) but, their evidence also requires an objective scrutiny. It may be pointed out that in his zeal to support the version of his cousin viz. the appellant Murlidhar adopted a partisan approach not only by blaming Kanta for creating rift in her marital relationship but also by expressing ignorance about the fact of separation of spouses. His evidence, therefore, was rightly discarded by the learned trial Judge while holding that the Moolchand had given a true account of the Rakhi eposide.

26. The third manifestation of cruelty by compelling Kanta to perform train journey all-alone without ticket was also duly substantiated by Moolchand. Moreover, its veracity was also admitted by the appellant in his letter (Ex.P-30) as "Nagpur Tragedy".

27. As projected by Kanta in one of her letters (marked as Ex.P-25), another incident that proved to be a recurring cause of torture meted out to her related to television. According to her, Shobhraj could not even assess the extent of difficulty faced by her for his refusal to provide a television to the appellant. However, learned counsel for the appellant, while making reference to the relevant part of statement of Lajwanti (PW14) has contended that the expression did not reflect harassment for non-satisfaction of demand of television in dowry. The contention has substance, as according to Lajwanti, on a Sunday evening, when the appellant was watching a film on television at her residence, it was turned off by Shobhraj in view of the fact that that her mother-in-law, a heart patient, was lying in the adjacent room in a serious condition. Although, she denied the suggestion that the appellant was not allowed to take T.V. to the first floor of the house yet, it was evident from the relevant extracts of the subsequent letters that the incident turned out to be a permanent pretext for his cruel behaviour with Kanta.

28. In order to rebut the charge of cruelty, the appellant examined his colleague Manoj Shrivastava (DW1), younger brother Ravi (DW5) and cousin Murlidhar

(DW2). Manoj corroborated the fact that in the year 1986, while undergoing training in the academy at Bhopal, the appellant had taken special permission to keep Kanta with him in the Hostel room. He further deposed that during the training period, the appellant had maintained a cordial relationship with his in-laws also. According to Ravi, he had been residing with the couple for nearly two years prior to the incident in question and during this period, the appellant had not entered into any domestic quarrel with Kanta. Bhishmadas (DW3), who, as per the prosecution case, had played a significant role in brining about a settlement by attesting the deed of undertaking, completely denied the corresponding fact. Further, like Murlidhar, he also made an attempt to establish that Kanta was not only reluctant to live in a joint family but was also disrespectful to senior members thereof. But, the fact of the matter is that no such complaint was made by the appellant in any one of his letters addressed to Shobhraj. Moreover, the assertion made by Ravi as to the nature of relationship between his brother and Bhabhi was falsified by the contents of the last three letters (Ex.P-24, P-25 and P-26) written by Kanta to Shobhraj.

29. This apart, the fact that none of the neighbours namely Ashok Kumar Shivhare (PW2), C.S. Narula (PW7) and Arun Kumar (DW4) had supported the prosecution version that the marital relationship between the appellant and Kanta was far from being normal, also did not assume any significance. Considering the social status of the appellant and the locality where the place of occurrence was situated, it was not expected that physical torture or harassment of Kanta should be made within the view or hearing of the inhabitants of the neighbourhood (See. *State of W.B. vs. Orilal Jaiswal* (1994) 1 SCC 73).

30. As rightly pointed out by Andhra Pradesh High Court in *Alamuri Lalitha Devi vs. State of A. P.* 1995 CRI. L. J. 2127, the legislature has not preferred to give any comprehensive definition of cruelty for the purpose of Section 489-A of the IPC. Further, cruelty has not been defined under Section 13(1)(i-a) of the Hindu Marriage Act but, in relation to matrimonial matters it is contemplated as a conduct of such type, which endangers the living of the petitioner with the respondent (*Savitri Pandey vs. Prem Chandra Pandey* (2002) 2 SCC 73 referred to).

31. It is true that none of the letters relied upon by the prosecution contained any demand for dowry but, as explained by the Supreme Court in *Giridhar's case* (2002) 5 SCC 177, in the statutory provision under Section 498A of the IPC, two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty", where explanation (a) involves three specific situations viz. (1) to drive a woman to commit suicide or (2) to cause grave injury or (3) to cause danger to life, limb or health, both mental and physical. In explanation (b) there is an absence of physical injury that includes coercive harassment which obviously is equally heinous to match the physical injury, where one is patent, the other one

is latent, but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of cruelty in terms of Section 498-A of the IPC.

32. However, learned counsel for the appellant still contended that even if the acts of cruelty alleged to have been committed during the periods from 1984 to 1986 are found to be proved from the evidence on record, his conviction for the offence under Section 498A of the IPC would not be sustainable in view of fact that by virtue of Section 468(2c) of the Code, its cognizance could only be taken within the prescribed period of three years. The contention is, apparently, untenable as the appellant was charge-sheeted not only for the offence under Section 498A but also for that punishable under Section 306 of the IPC with an imprisonment for a maximum term of 10 years. A three judge Bench of the Apex Court in *State of H.P. vs. Tara Dutt* AIR 2000 SC 297, while considering an identical question, has held that the period of limitation has to be determined with reference to the offences the accused was charged with and not with reference to the charges he was convicted under. This apart, as concluded already, the systematic and persistent maltreatment given to Kanta had come to an end with her untimely death only. Therefore, each act of cruelty to which she was subjected, provided a new starting point of limitation (*Arun Vyas vs. Anita Vyas* AIR 1999 SC 2071 followed).

33. Further, while making reference to a decision of the Apex Court in *Sakatar Singh vs. State of Haryana* AIR 2004 SC 2570, learned counsel for the appellant has strenuously contended that the trial was vitiated due to the fact that he was not properly examined under Section 313 of the Code with reference to the alleged extra-judicial confessions made in some of his letters addressed to Shobhraj. However, the fact remains that there were as many as 25 substantial questions including the one pertaining to the letters (Ex.P-30 to P-36) were asked in the examination. Further, the so-called vagueness in the corresponding questions was not sufficient to mislead the appellant, who was a member of State Accounts Service, in his defence or to occasion a failure of justice.

34. To conclude, in the light of the overwhelming oral as well as documentary evidence on record as re-appreciated above, the learned trial Judge did not commit any illegality in holding that Kanta had been subjected to physical as well as mental cruelty by the appellant almost throughout their marital life.

Abetment to commit suicide

35. While making reference to the pronouncement of the Supreme Court in *Sanju @ Sanjay Singh Sengar vs. State of M.P.* 2002 AIR SCW 2035, learned counsel for the appellant has contended that conviction of the appellant for the offence punishable under Section 306 of the IPC is not sustainable in law as there was no evidence on record to show that the suicide was a direct result of any immediately preceding quarrel. However, admittedly, the appellant had returned from Bhopal on the fateful day a few hours before the incident in question. Peon Bhiayalal (PW1) was emphatic in stating that the appellant had not returned till 12

noon. Had Kanta desired to end her life due to any other reason, she could have done so in absence of the appellant only. In this view of the matter, being the only other person present in the bungalow at the time of alleged occurrence, he was expected to be aware of the circumstances surrounding the death of his wife.

36. Even though, the prosecution has to establish prima facie the case in the first instance yet, it is not the law of the country that the prosecution has to eliminate all possible evidences and circumstances, which may exonerate him. If those facts are within the knowledge of the accused then he has to prove them. In this view of the matter, the non-explanation of the circumstances during the period intervening his return from Bhopal and untimely death of his wife Kanta was the strongest possible circumstance to discredit the defence version. For this, reference may be made to a decision of Apex Court in *Gajendra Singh vs. State of U.P.* AIR 1975 SC 1703. Thus, the decision in *Sanju's case* 2002 AIR SCW 2035 (above) is also of no avail to the appellant.

37. As pointed out already, circumstances of the transaction, leading to an unnatural death of Kanta, included oral as well as documentary evidence of cruelty which produces a state of mind favourable to suicide (See. *Kans Raj vs. State of Punjab* (2000) 5 SCC 207).

38. While placing reliance on the principle of law laid down in *Bater vs. Bater* (1950) 2 ALL ER 458, the Apex Court in *Orilal Jaiswal's case* (1994) 1 SCC 73 explained the true meaning and scope of the rule of benefit of doubt. It was observed that an exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. However, the following note of caution was also sounded: -

> "the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty"

39. Appreciating the evidence on record in the wake of the afore-quoted guideline, it may be seen that there is no material on record to suggest that Kanta was hypersensitive to ordinary petulance. On the contrary, tenor of the letters written by her was sufficient to indicate her maturity in understanding the complexity of an unhappy domestic life. Accordingly, the appellant was rightly held guilty of abetting commission of suicide by his wife Kanta.

Non-examination of the Investigating Officer

40. No dispute was raised as to correctness of site plan and contents of the lists of seizure and the inquest report prepared by the investigating officer viz. Dy.S.P. R.S. Tiwari, who, admittedly, died later on. It is well-settled that non-examination of the Investigating Officer does not, in every case, cause prejudice or affect the credibility of the prosecution witnesses. For this, reference may be made to the ratio laid down by the Apex Court in *Ramdev vs. State of U.P.* 1995 Supp (1) SCC 547 and re-affirmed in all subsequent decisions on the point including the one in *Rajkishore Jha vs. State of Bihar* AIR 2002 SC 4664.

41. A bare perusal of the record would reveal that Inspector M.I. Farooqui only scribed the FIR and recorded statement of Govindram, who was not examined by the prosecution. He remained present on two consecutive dates of hearing on 25th and 26th April 1990 but could not be examined. In such a situation, his non-examination would also not afford any ground of acquittal.

42. To sum up, none of the contentions raised by the appellant against legality and propriety of the convictions deserves acceptance. Further, taking into consideration the nature of offences, his magnitudes and corresponding social impact, the delay in disposal of the appeal cannot be considered as mitigating circumstance to interfere with the impugned sentences of imprisonment.

43. Consequently, the appeal is dismissed and the impugned convictions and consequent sentences of the appellant are hereby maintained.

44. The appellant is on bail. He is directed to surrender to his bail bonds for undergoing the remaining part of the sentence.

Appeal dismissed.

I.L.R. [2008] M. P., 3299
APPELLATE CRIMINAL
Before Mr. Justice Ajit Singh & Mr. Justice Rakesh Saksena
28 March, 2008*

MADAN SINGH ... Appellant
Vs.
STATE OF M.P. ... Respondent

Penal Code (45 of 1860), Section 302, Evidence Act, 1872, Section 3 - *Murder - Reliability of child witness* - *The testimony of a child witness should be accepted with great caution and circumspection, because it is common experience that a child witness is susceptible to tutoring and may thereby be made to depose about the things which he/she has not seen - On being tutored, a child witness goes on repeating like a parrot - Such witnesses become dangerous witnesses - As a rule of prudence, if the court puts such*

*Cr.A. No.48/1999 (Jabalpur)

evidence to close scrutiny and is conviced about its' quality and reliability, the conviction can be based by accepting the deposition of a child witness. (Para 10)

दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम, 1872, धारा 3 – हत्या – बाल साक्षी की विश्वसनीयता – बाल साक्षी का अभिसाक्ष्य बड़ी सावधानी और सतर्कता से स्वीकार किया जाना चाहिए क्योंकि यह सामान्य अनुभव है कि बाल साक्षी को सिखाना–पढ़ाना संभव है और वह उस चीज के बारे में जो उसने नही देखी है, साक्ष्य दे सकता/सकती है – सिखाने–पढ़ाने पर, बाल साक्षी तोते की तरह दोहराने लगता है – ऐसे साक्षी जोखिमपूर्ण साक्षी बन जाते हैं – सामान्य प्रज्ञा के नियम के अनुसार यदि न्यायालय ऐसी साक्ष्य की सूक्ष्म जाँच करता है और उसके गुण और विश्वसनीयता पर विश्वास करता है तो दोषसिद्धि बाल साक्षी के साक्ष्य पर आधारित हो सकती है।

Case referred :

JT 2008(2) SC 556.

JUDGMENT

RAKESH SAKSENA, J.:–Appellant has filed this appeal against the judgment dated 26.12.1998 passed by the First Additional Sessions Judge, Jabalpur in Sessions Trial No.467/1997, convicting him under Section 302 of the Indian Penal Code and sentencing him to life imprisonment alongwith fine of Rs.2,000/- with default stipulation.

2. It is pertinent to mention that despite repeated calls even in the third round, none appeared to argue the case on behalf of the appellant. Since the appellant is in jail for about 10 years, in the light of law laid down by the Apex Court in *Bani Singh & others Vs. State of U.P.*, AIR 1996 SC 2439, we ourselves perused the impugned judgment and record of the Trial Court with the assistance of Shri R.S.Patel, the learned Additional Advocate General and examined the case on merits with all care and caution.

3. In brief, the prosecution case is that the husband of Mayabai (deceased) had died. After the death of her husband, she started living with the appellant as his mistress. A few days before the incident which occurred on 21.04.1997, the father of Mayabai also died. After the death of her father, Mayabai started living at her father's house situated at PWD Office, Set No.20, Kanchanpur. On 21.04.1997 at about 6:45 pm, the appellant went there to fetch Mayabai, but she refused to go with him whereupon he dealt two blows with a knife on her neck and ribs. Sunil (PW-1) and Manish, sons of Mayabai, informed Ramnaresh (PW-2) about the occurrence, who then went to her house. When he was carrying her to the Police Station in a cycle rickshaw, on way near Sanjay Nagar Power House, she died. Ramnaresh (PW-2) lodged the First Information Report (Exhibit P/1) at Police Station Adhartal, at 7:00 pm. Police Inspector Raghuveer Singh (PW-5) recorded the First Information Report (Exhibit P/1) and a "marg" report (Exhibit P/8). He went to the spot and after completing the inquest proceedings sent the dead body of Mayabai for post mortem examination to the Medical College, Jabalpur.

4. On 22.04.1997, Dr.J.M.Sahgal (PW-7), C.M.O. of Medical College, performed the post mortem examination of the dead body of Mayabai. He found two stab wounds on her body vide post mortem report (Exhibit P/12). One stab wound measuring 1 ½ x ½ cms was situated 1 cm below the adam's apple on the right side of her neck going downwards cutting carotid artery, jugular vein and apical lobe of right lung upto depth of 2 cms. Second stab wound measuring 1 ½ x ¾ cms was situated on seventh left intercostal space at the level of posterior fold of axilla. It was going internally and medially cutting the pleura, lung and partly inferior vena cava. Total length of wound was 10 cms. In his opinion, the injuries were ante mortem in nature and were caused by hard, sharp and penetrating weapon. Cause of death was haemorrahagic shock as a result of injuries. After investigation charge sheet was filed.

5. During trial, the prosecution examined seven witnesses. Defence of the appellant was of denial and false implication. However, the Trial Court relying on the evidence of Sunil (PW-1), a child witness and medical evidence of Dr.J.M.Sahgal (PW-7) convicted the appellant for causing death of Mayabai and sentenced him as mentioned earlier.

6. Grounds highlighted in the memorandum of appeal are that the Trial Court has committed error in placing reliance on the solitary testimony of child witness Sunil (PW-1) who appears to be a tutored witness. The evidence of Sunil (PW-1) is discrepant and contradictory and has no independent corroboration. Ramnaresh (PW-2) who lodged the First Information Report, denied its contents. Ashok (PW-4) did not support the prosecution case. As such, the Trial Court committed error in convicting the appellant. Learned counsel for the State instead submits that the evidence of Sunil (PW-1) is consistent and reliable and suffers with no infirmities. Trial Court has committed no error in placing reliance on his testimony. He supports the judgment of conviction passed by the Trial Court.

7. In a recent decision in Appeal (crl.) 345 of 2008-*Nivrutti Pandurang Kokate & Ors. vs. State of Maharashtra* , JT 2008(2) SC 556, the Apex Court elaborately dealt with the point of acceptability of child witness and observed that:

> "8. ..... The Indian Evidence Act, 1872 (in short "the Evidence Act") does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease; whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. This position was concisely stated by Brewer, J. in *Wheeler v. United States* (159 US 523). The

evidence of a child witness is not required to be rejected per se, but the court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. [See *Suryanarayana v. State of Karnataka* (2001 (9) SCC 129)].

9. In *Dattu Ramrao Sakhare v. State of Maharashtra* [(1997) 5 SCC 3411] it was held as follows: (SCC p. 343, para5):

"A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored."

The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.

10. The above position was highlighted in *Ratansingh Dalsukhbhai Nayak v. State of Gujarat* (2004 (1) SCC 64)....."

8. Sunil (PW-1) who is young boy of about 8 years of age is a student of class-II. He has testified that when he and his brother Manish were at home and his mother was kneading flour, the appellant came to his house and demanded money from his mother and dealt knife blows on her neck and abdomen. Ashok (PW-4) and Ramnaresh (PW-2) came to his house. He has categorically stated that he saw the appellant stabbing his mother. In the cross-examination, some

omissions are found in his evidence, but they do not go to the root of the case or otherwise render his testimony unreliable. Discrepancies relating to such matters as to who had taken Mayabai to hospital and whether the appellant had demanded money from her do not affect the credibility of Sunil (PW-1) on the crucial point that he saw the appellant stabbing Mayabai. In paragraph No.13 of his evidence, no doubt, he stated that he gave evidence on being asked by her sister, but he clarified that she had asked him to tell the Court as to who had killed his mother. It was nowhere suggested that he was tutored and was telling a lie before the Court. On close scrutiny of the evidence of Sunil (PW-1), it is not found to suffer with any material infirmity. The evidence of Sunil (PW-1) stands corroborated by the evidence of Dr.J.M.Sahgal (PW-7) who performed the post mortem examination of the dead body of Mayabai and found two stab wounds on her body. As stated by Sunil (PW-1), one stab wound was found on the neck and another stab wound was found on the seventh intercostal space. These injuries were caused by hard, sharp and pointed object and were homicidal in nature.

9. We are unable to hold that Sunil (PW-1) should be disbelieved merely because Ramnaresh (PW-2) who lodged the First Information Report, did not support the prosecution case. On perusal of testimony of Ramnaresh (PW-2), it is seen that he admitted that elder son of Mayabai came to him and informed that Mayabai was lying in a pool of blood. Though he admitted that he went to the Police Station and lodged the report and put his thumb impression on it, but he did not admit the contents of the First Information Report. Police Inspector Raghuveer Singh (PW-5) has testified that Ramnaresh (PW-2) had lodged the report at the Police Station and had disclosed therein that Mayabai was stabbed by the appellant. Since the First Information Report cannot be treated as substantial piece of evidence, the contents of the First Information Report lodged by Ramnaresh (PW-2), in the present situation, can only be used for the purpose of contradicting him. Ramnaresh (PW-2) has also testified that he did not know Madan Singh. In these circumstances, it appears that Ramnaresh (PW-2) is not speaking truth before the Court. Anyway, he is not an eyewitness himself.

10. It is true that in case of a child witness the Court should carefully consider as to whether the child was under the influence of some tutor. The testimony of a child witness should be accepted with great caution and circumspection, because it is common experience that a child witness is susceptible to tutoring and may thereby be made to depose about the things which he/she has not seen. On being tutored, a child witness goes on repeating like a parrot. Such witnesses become dangerous witnesses. As a rule of prudence, if the Court puts such evidence to close scrutiny and is convinced about its quality and reliability, the conviction can be based by accepting the deposition of a child witness. In the instant case, there is absolutely no material on record to indicate that Sunil (PW-1) was in any manner tutored to speak against the appellant falsely. We feel satisfied that Sunil (PW-1)

was a boy of good understanding and was able of giving rational answers to the questions put to him. His presence in his house at the time of occurrence is natural. On careful and cautious scrutiny of the evidence of Sunil (PW-1), we find his evidence concise, precise and specific on the point that he had seen the appellant assaulting his mother Mayabai with a knife.

11. In view of the above, we have no hesitation in concluding that Sunil (PW-1) is truthful witness and conviction can be safely based on his testimony.

12. From the evidence of Dr.J.M.Sahgal (PW-7), it is established that Mayabai had received homicidal stab injuries on the vital parts of body. As a result of stab wound on the neck, carotid artery, jugular vein and apical lobe of right lung were cut. The length of wound was 8 cms. Similarly, stab wound on seventh left intercostal space had internally cut pleura, lung and inferior vena cava. The length of wound was 10 cms. Mayabai had died as a result of these injuries. In the facts and circumstances of the case, we are convinced that it has been fully established that the appellant is guilty of committing murder of Mayabai and has been rightly convicted by the Trial Court under Section 302 of the Indian Penal Code.

13. In the result, the judgment of conviction and sentence of the appellant passed by the Trial Court is affirmed. The appeal is dismissed.

Appeal dismissed.

I.L.R. [2008] M. P., 3304
APPELLATE CRIMINAL
Before Mr. Justice A.K. Shrivastava
11 April, 2008*

BAIJNATH PRASAD PATEL ... Appellant
Vs.
STATE OF M.P. ... Respondent

Prevention of Corruption Act (49 of 1988), Section 20 - *Presumption* - *U/s 20 of the Act there is statutory presumption of acceptance of bribe if offence u/s 7 or 11 or 13(1)(a) or 13(1)(b) is proved - It is for accused to explain and rebut the presumption by leading evidence.* (Para 16)

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 20 – उपधारणा – यदि धारा 7 या 11 या 13(1)(ए) या 13(1)(बी) के अधीन अपराध साबित कर दिया जाता है तो अधिनियम की धारा 20 के अन्तर्गत रिश्वत ग्रहण करने की वैधानिक उपधारणा की जायेगी – अभियुक्त के लिए आवश्यक है कि वह साक्ष्य पेश करके स्थिति स्पष्ट करे और उपधारणा को खण्डित करे।

Cases referred :

(2007) 7 SCC 625, 2002 Cr.L.J. 2787, AIR 1989 SC 950.

Shobhitaditya, for the appellant.
Aseem Dixit, P.P., for the respondent/State.

*Cr.A. No.1717/1995 (Jabalpur)

JUDGMENT

A.K. Shrivastava, J. :–Feeling aggrieved by the judgment of conviction and order of sentence dated 10/11/1995 passed by learned Special Judge, Rewa in Special Case No. 3/92, convicting the appellant under sections 7 and 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act, 1988 (in short 'the Act') and thereby sentencing him to suffer rigorous imprisonment of one year and six months and to pay a fine of Rs.500/-, in default of payment of fine, further RI of six months, the appellant has knocked the door of this Court by preferring this appeal under section 374 (2) of the Code of Criminal Procedure, 1973.

2. In brief the case of prosecution is that on 3/11/1988 the appellant was serving on the post of Head Constable in Police Station Baikunthpur, District Rewa. A case was registered against complainant Kamalbhan Singh under sections 323, 294, 341 and 506 IPC and complainant Kamalbhan Singh submitted an application for the grant of anticipatory bail which was allowed and he was directed to be enlarged on bail on his furnishing the bail bonds as directed by the Court which allowed the application.

3. It is said that in order to accept the papers of anticipatory bail the appellant made demand of illegal gratification of Rs.100/- from the complainant which he did not want to give, as such he submitted an application on 3/11/1988 before the Dy. Superintendent of Police, Special Police Establishment Lok Ayukta, Rewa making complaint that appellant is making demand of Rs.100/- in order to accept the papers of anticipatory bail.

4. On lodging of the complaint (Ex.P-4) Office of Special Police Establishment came into action. A demonstration of trap was made and currency note of Rs.100/- covered by phenolphthalein powder was handed over to the complainant with the direction that he should not touch the currency note till the appellant makes demand of bribe. The complainant was pacified that after passing on the currency note to the appellant, he (complainant) will give signal to the trap party so that the appellant may be caught red-handed. Thereafter trap party proceeded in a jeep to the Police Station Baikunthpur where the appellant was posted. Complainant Kamalbhan Singh told the appellant that he has brought the bribe of Rs.100/- for him as such he (appellant) told that let us go towards the hotel (restaurant) to have a cup of tea. It is said that in the restaurant shadow witnesses Jawahar and Pushparaj Singh were already sitting. At the hotel appellant made demand of bribe, eventually, in the restaurant currency note of Rs.100/- covered by phenolphthalein powder was handed over by the complainant to the appellant which was kept by the appellant in the pocket of his trouser. Thereafter a signal was given by the complainant to the trap party, as a result of which the members of trap party rushed towards the restaurant. On the interrogation made by the trap party, appellant threw currency note on the bench. However, the appellant was caught and his hands were washed in the solution of sodium carbonate and the hand wash solution turned to pink colour.

5. After completing investigation a charge-sheet was submitted in the Special Court. The learned Special Judge on the basis of allegations made in the charge-sheet framed charges punishable under sections 7 and 13 (1) (d) read with section 13 (2) of the Act which he denied and requested for trial.

6. In order to prove the charges prosecution examined as many as ten witnesses and placed Exs.P-1 to P-18, the documents on record.

7. The defence of the appellant is that he has been falsely implicated because the complainant was keen enough and was insisting him to close the case for which the appellant was not ready and, therefore, he has been falsely roped in the present case.

8. Learned Special Judge on the basis of oral and documentary evidence placed on record came to hold that the appellant did commit the offences for which he was charged and eventually convicted him and passed the sentence which I have already mentioned here-in-above.

9. In this manner the appellant has preferred this appeal assailing the impugned judgment of conviction and order of sentence passed by learned Special Judge.

10. The contention of Shri Shobhitaditya, learned counsel for the appellant is that if the evidence of complainant Kamalbhan Singh (PW-2) and shadow witness Pushparaj Singh (PW-3) is considered in proper perspective it is revealed that their evidence is inconsistent to each other on the material point of recovery of currency note and if that would be the position, learned Special Judge erred in convicting the appellant. In this context he has also invited my attention to the evidence of trap witness K.L. Gupta (PW-7) and has submitted that this trap witness has not stated about the giving of the signal by the complainant to the trap party and thus story which has been cooked by the prosecution would not implicate the appellant in the present case.

11. On the other hand, Shri Aseem Dixit, learned Public Prosecutor for the respondent/State has argued in support of the impugned judgment.

12. Having heard learned counsel for the parties, I am of the view that this appeal deserves to be dismissed.

13. On going through complaint Ex.P-4 it is gathered that the same was lodged on 3/11/88 by complainant Kamalbhan Singh (PW-2) to the Dy. Superintendent of Police, Special Police Establishment, Lok Ayukta Office, Rewa Division, Rewa. In the complaint it has been stated by him that appellant is making demand of Rs.100/- as bribe and has told that the papers of anticipatory bail would be accepted only if the amount of Rs.100/- is given to him. This complaint has been proved by complainant Kamalbhan Singh when he appeared in the Court as PW-2. In his deposition he has specifically stated that after making complaint a trap was arranged and currency note of Rs.100/- covered by phenolphthalein powder was given to him and he was directed to hand over the same to the appellant only

when he makes demand of bribe. Thereafter in a jeep he along with the members of trap party went towards the Police Station Baikunthpur. Near the bus stand he was dropped from the jeep by the trap party and thereafter he alone went inside the police station. In the police station he told to the appellant that he has brought the money which he (appellant) has demanded. Further he has stated that he told to the appellant that after obtaining bribe, his papers of anticipatory bail may be accepted. Thereafter appellant suggested complainant to have a cup of tea first and thereafter he (complainant) along with the appellant went to the hotel of Ramji Gupta where shadow witnesses Jawahar and Pushparaj Singh were already sitting. In para 6 he has specifically stated that in the hotel on demand being made by the appellant, he (complainant) handed over the said amount to him which was kept by the appellant in the right pocket of his trouser. Thereafter this witness gave signal to the trap party, as a result of which they rushed to the hotel of Ramji Gupta and caught the appellant. The hands of the appellant were washed in the solution of sodium carbonate and the solution turned to pink colour. The currency note which was kept by the appellant in the pocket of his trouser was also recovered and the pocket of his trouser was also washed in the solution of sodium carbonate and on washing the same the solution turned to pink colour. A handkerchief which was also kept by the appellant in the pocket of his trouser was recovered. The pocket of trouser and handkerchief were also washed in the solution of sodium carbonate and the colour of the solution turned to pink. In para 30 of his cross-examination also he has stated the same version. True there are some omissions in his case-diary statement, but, according to me, they are minor and do not go to the root of the case. Very specifically in para 31 of his cross-examination complainant has stated that when he and appellant were drinking the tea and were eating the snacks, he (complainant) gave the amount of bribe to him and on giving signal to the trap party, members of the trap party rushed and caught the appellant. Thus I am of the view that from the evidence of the complainant not only the demand of bribe but also its acceptance has been proved.

14. The statement of complainant Kamalbhan Singh (PW-1)has been corroborated by the evidence of shadow witness Pushparaj Singh (PW-3), who has also stated that after passing on the money to the appellant, signal was given and trap party caught the appellant and when the hands of the appellant were washed colour of the chemical turned to pink. True it has been so stated by this witness in para 15 of his testimony that appellant threw currency note by taking out it from the pocket of his trouser, but this act of appellant will not dilute the case of prosecution. Because, looking to the circumstances, even if it is held that appellant threw the currency note, it cannot be said that charges are not proved. If the appellant has thrown the currency note on seeing the trap party, his act of throwing the currency note would rather strengthen the case of prosecution. It can be inferred that in order to demonstrate himself to be an innocent person he threw the currency note on seeing the trap party.

15. Similar type is the evidence of K.L.Gupta (PW-7) who is a witness to the trap. I do not find any substance in the submission of learned counsel for the appellant that trap witness K.L. Gupta (PW-7) has not stated that after receiving signal, trap party went to catch the appellant and therefore it raises a doubt in regard to the implication of appellant in the alleged offence. The demand of bribe and its acceptance has been proved from the testimony of complainant Kamalbhan Singh (PW-2) and shadow witness Pushparaj Singh (PW-3) and there is also recovery of currency note of Rs.100/- from appellant. It is immaterial whether it was thrown by the appellant or it was recovered from the pocket of his trouser.

16. Under section 20 of the Act there is statutory presumption of acceptance of bribe if the offence under section 7 of section 11 or clause (a) or (b) of sub-section (1) of section 13 is proved and it is for the accused to explain and rebut the presumption. Though the defence of appellant in his statement recorded under section 313, Cr.P.C is that in order to get the criminal case closed against complainant for which he was not agreeing, he has been falsely implicated, but in support of this defence, he has not examined any witness. From the statement of prosecution witnesses the defence is not found to be probable because only suggestion has been made in this regard. The Supreme Court in the case of *Girja Prasad v. State of M.P.* (2007) 7 SCC 625 has held once it is proved that the amount has been received by the accused, presumption under section 4 (corresponding section 20 of the Act of 1988) would get attracted. In such a case,it would be wholly immaterial whether the said acceptance of amount was for him or for someone else. It would also be immaterial whether the accused was or was not in a position to oblige the complainant. The Supreme Court has further held that an accused can rebut the said presumption by leading evidence. In paras 21 and 31 of the said decision the Supreme Court has laid down the law that the doctrine of preponderance and probability would not be applicable where no evidence was adduced by the accused to rebut the statutory presumption. The Apex Court held that merely by taking the defence of 'total denial' and 'false application' the said doctrine would not be attracted. In the present case also no evidence has been led by the appellant in regard to his defence. Hence the decision of *Girja Prasad* (supra) is fully applicable in the present case.

17. Learned counsel for the appellant has placed reliance on two decisions of the Supreme Court; they are *Subash Parbat Sonvane v. State of Gujrat* 2002 Cri.L.J. 2787 and *Kewal Krishan v. State of Punjab* AIR 1989 SC 950. In the case of *Kewal Krishan* (supra) the evidence of complainant was not found trustworthy and hence the accused was acquitted. In the present case the evidence of complainant Kamalbhan Singh (PW-2) and shadow witness Pushparaj Singh (PW-3) is found to be quite reliable. The decision of *Subat Parbat Sonvane* (supra) is also not applicable because in the present case there is overwhelming

evidence that not only the appellant made demand of illegal gratification but it has also been accepted by him coupled with other important circumstance that recovery of Rs.100/- from him is also proved. Thus, I am of the view that learned Special Judge did not err in convicting the appellant for the charges imposed on him as they are proved.

18. However, looking to the age of the appellant as he appears to be near about 79 years today, he is directed to suffer minimum jail sentence of one year. The sentence of fine imposed is set aside. It is made clear that the jail sentence of one year would be simple imprisonment.

19. With the above-said modification in the sentence, this appeal is found to be bereft of any substance and the same is hereby dismissed. The appellant is on bail, his bail-bonds are cancelled. He is directed to surrender before the trial Court to serve out the sentence.

Appeal dismissed.

I.L.R. [2008] M. P., 3309
APPELLATE CRIMINAL
Before Mr. Justice Ajit Singh & Mr. Justice Rakesh Saksena
11 April, 2008*

BHAIYALAL & ors. ... Appellants
Vs.
STATE OF M.P. ... Respondent

A. Penal Code (45 of 1860), Section 302 - *Murder - Medical Evidence - Witnesses stated that injury on head was caused by Lathi - In M.L.C., Doctor opined that injury was incised wound and was caused by sharp edged weapon - In postmortem, Doctor found lacerated wound - Held - Deceased was in serious condition when he was brought to Hospital - Doctor hastily and cursorily examined his injuries whereas Autopsy Doctor examined injuries minutely - Evidence of Autopsy Doctor more reliable if examined in juxtaposition of evidence of eye witnesses - No discrepancy in oral and medical evidence.* (Para 12)

क. दण्ड संहिता (1860 का 45), धारा 302 – हत्या – चिकित्सीय साक्ष्य – साक्षियों ने कथन किया कि सिर पर क्षति लाठी से कारित की गई – एम.एल.सी. में चिकित्सक ने राय दी कि क्षति छिन्न घाव थी और तेज धार वाले आयुध से कारित की गई – शव परीक्षण में चिकित्सक ने विदीर्ण घाव पाये – अभिनिर्धारित – मृतक, जब वह चिकित्सालय में लाया गया, गम्भीर अवस्था में था – चिकित्सक ने जल्दबाजी से और सरसरी तौर पर उसकी क्षतियों की जाँच की जबकि शव–परीक्षा चिकित्सक ने क्षतियों की सूक्ष्मतया जाँच की – शव–परीक्षा चिकित्सक की साक्ष्य अधिक विश्वसनीय है यदि प्रत्यक्षदर्शी साक्षियों की साक्ष्य के सानिध्य में परीक्षा की जाए – मौखिक और चिकित्सीय साक्ष्य में कोई विसंगति नही।

*Cr.A. No.53/1999 (Jabalpur)

B. Penal Code (45 of 1860), Sections 302 & 304 Part II - *Murder or culpable homicide not amounting to murder* - *Appellants went to house of deceased and admonished him for his making false allegation against acquitted accused of theft of buffalos - This led to hot altercation and appellants gave Lathi blow on head and sholder of deceased - Held - Only one injury found on head of deceased - Difficult to hold that who caused injury on head as witnesses have stated that both appellants each had dealt one Lathi blow on head - None of the Doctors have stated that injury was sufficient to cause death - It can be held that appellant No.2 and 3 knew that by their acts they were likely to cause his death - Convicted u/s 304 Part II - Sentenced to undergo 5 years R.I. - Appeal partly allowed.* (Para 16)

ख. **दण्ड संहिता (1860 का 45), धारा 302 व 304 भाग II** – **हत्या या हत्या की कोटि में न आने वाला सदोष मानव वध** – अपीलार्थी मृतक के घर गये और दोषमुक्त अभियुक्त के विरुद्ध भैंसों की चोरी का मिथ्या आरोप लगाने के लिए उसकी भर्त्सना की – इससे उग्र झगड़ा हुआ और अपीलार्थियों ने मृतक के सिर और कंधों पर लाठी का प्रहार किया – अभिनिर्धारित – मृतक के सिर पर केवल एक क्षति पायी गई – यह अभिनिर्धारित करना कठिन है कि सिर पर किसने क्षति कारित की क्योंकि साक्षियों ने कथन किया है कि दोनों अपीलार्थियों में से प्रत्येक ने सिर पर एक लाठी का प्रहार किया था – किसी भी चिकित्सक ने यह कथन नही किया कि क्षति मृत्यु कारित करने के लिए पर्याप्त थी – यह अभिनिर्धारित किया जा सकता है कि अपीलार्थी क्रमांक 2 व 3 जानते थे कि उनके कृत्य से मृत्यु कारित होना संभाव्य थी – धारा 304 भाग II के अन्तर्गत दोषसिद्धि – 5 वर्ष के सश्रम कारावास का दण्डादेश दिया – अपील अंशतः मंजूर।

S.K.P. Verma & Ramesh Shrivastava, for the appellants.
Prakash Gupta, Panel Lawyer, for the respondent/State.

JUDGMENT

The Judgment of the Court was delivered by **RAKESH SAKSENA, J.**:–Appellants have filed this appeal against the judgment dated 19.11.1998 passed by the Sessions Judge, Panna, in Sessions Trial No.78/1997, convicting them under Section 302/34 of the Indian Penal Code and sentencing them to imprisonment for life. Appellants No.2 and 3 have further been convicted under Section 323/34 of the Indian Penal Code and sentenced to rigorous imprisonment for one month with fine of Rs.200/-.

2. It is to be noted that accused Mathura (acquitted) is "Phoopha" (husband of father's sister) of Badda @ Devi Dayal (deceased) and appellants Bhaiyalal, Kaura and Manja are the sons of Mathura. Betu (PW-1), Kallu (PW-2), Durga (PW-8) and the deceased are real brothers. Premabai (PW-4) and Vimlabai (PW-5) are the wife and daughter of the deceased.

3. In short, the prosecution case is that on 08.08.1997 at about 19:00 hours, appellants along with accused Mathura went to the house of Badda @ Devi Dayal. Mathura called him out and admonished for his making false accusation against him of theft of buffalos. Badda denied to have made any such accusation against

him. This led to a hot altercation in the course of which Mathura abused him and exhorted appellant Manja to beat Badda whereupon Manja dealt a lathi blow on his head. Appellant Kaura dealt another blow on his head. It is alleged that, thereafter, appellant Bhaiyalal also dealt a lathi blow on his shoulder. Badda fell down. When Betu PW-1 and Gaya tried to save him, appellant Manja dealt lathi blows to them also. Betu (PW-1) along with injured Badda went to Police Station, Dharampur and lodged the report (Exhibit P/1) at 21:00 hours. Head Constable Baijnath Mishra (PW-14) recorded the First Information Report and sent the injured persons for medical examination to Primary Health Centre, Dharampur. Dr.M.S.Tomar (PW-15) examined the injuries of Badda, Betu and Gaya. He found one incised wound 7 cms X 1 cm X deep upto bone on the occi-parietal region of the skull of Badda. According to him, the injury was caused by a sharp cutting object. Injury report is Exhibit P/17. Dr.M.S.Tomar (PW-15) found one lacerated wound on the left parietal region of the skull of Betu (PW-1) vide injury report Exhibit P/18 and one incised wound on the right parietal region of the skull of Gaya vide injury report Exhibit P/19. Looking to the serious condition of Badda, Dr.M.S. Tomar (PW-15) referred him to Primary Health Centre, Ajaygarh for X-ray examination and further treatment. On the same day, Badda in unconscious state was admitted to the Primary Health Centre, Ajaygarh where, during the course of treatment, he expired at about 5:00 am on 09.08.1997. Dr.P.C. Shrivastava (PW-6) sent intimation of his death to Police Station, Ajaygarh, whereupon a "marg" report (Exhibit P/5) was recorded.

4. Dr.V.S. Upadhyay (PW-11) carried out the post mortem examination of the dead body of Badda and found two injuries on his body. One was a contusion on his left clavicle measuring 4 cms x 1 cm and second was a lacerated wound on the left parietal bone measuring 6 cms x 2 cms x bone deep. On internal examination, he found fracture of the left parietal bone of his skull. According to him, both the injuries were ante mortem in nature and were caused by hard and blunt object. In his opinion, the cause of death of the deceased was coma and shock due to head injury. The post mortem report given by Dr.V.S.Upadhyay is Exhibit P/9.

5. In the course of investigation, appellants were arrested. On their informations, lathis were seized and were sent to Forensic Science Laboratory, Sagar. As per the report of FSL (Exhibit P/33), bloodstains were found on the seized lathis. After investigation, charge sheet was filed and the case was committed for trial.

6. Trial Court framed charges against appellants Kaura and Manja under Sections 323, 323/34, 302, 302/34 and 341 of the Indian Penal Code. Appellant Bhaiyalal was charged under Sections 294 and 302/34 of the Indian Penal Code and accused Mathura was charged under Section 302/109 of the Indian Penal Code. Appellants abjured their guilt and pleaded false implication. According to them, Durga (PW-8), Gaya and Betu (PW-1) had assaulted them due to past

enmity. When they were going to lodge a report, a 'Panchayat' was convened. While they were holding 'Panchayat' under a Banyan tree, suddenly a branch of the tree fell down on Badda as a result of which he suffered injuries. Gaya who was sitting nearby also suffered injury in the same manner. According to them, appellant Bhaiyalal also lodged a report about their beating. Appellants examined Head Constable Baijnath Mishra (DW-1) and Hemprasad (DW-2) in support of their defence. Trial Court relying upon the evidence of eyewitnesses Betu (PW-1), Kallu (PW-2), Bihari (PW-3), Premabai (PW-4), Vimlabai (PW-5) and Durga (PW-8) and the medical evidence of Dr.V.S.Upadhyay (PW-11), convicted and sentenced the appellants as aforesaid. However, finding the evidence insufficient against accused Mathura, acquitted him.

7. Learned counsel for the appellants submitted that the prosecution examined only relatives and interested witnesses. Since no independent witness was produced by the prosecution, the Trial Court committed error in convicting the appellants on the evidence of such witnesses. He submitted that the evidence of Dr.M.S.Tomar (PW-15) who examined the injuries of Badda and the evidence of Dr.V.S.Upadhyay (PW-11), who performed the post mortem examination, are inconsistent and contradictory. As such, the Trial Court erred in placing reliance on the evidence of Dr.V.S. Upadhyay (PW-11). He further submitted that since the prosecution witnesses did not explain the injuries of appellants, their conviction deserves to be set aside. Per contra, learned Panel Lawyer for the State has submitted that the evidence of eyewitnesses cannot be discarded merely on the ground that they were relatives of the deceased, especially when their evidence is consistent, natural and trustworthy. Their presence at the house of the deceased, where the incident took place, is natural. The evidence of eyewitnesses has been corroborated by the medical evidence. As such, the Trial Court has committed no error in holding the appellants guilty. He supported the judgment of conviction passed by the Trial Court.

8. Since the eyewitnesses in the case are brothers and relatives of the deceased, we have examined their evidence with great caution and have perused the record of the case carefully.

9. Betu (PW-1) has testified that at about 7:00 pm on the day of occurrence, when Badda was taking his meals, appellants came to their house. Accused Mathura called him out and told that he had levelled accusation of theft against them. When Badda tried to explain that he did not make any such allegation, Mathura abused him and exhorted appellant Manja to beat him. Then, appellant Manja dealt a lathi blow on the head of Badda. Appellant Kaura dealt another lathi blow on his head. Appellant Bhaiyalal came running and shouting that he should be killed and inflicted a lathi blow on his shoulder. When Betu (PW-1) and his father Gaya tried to save him and to take him inside the house, appellant Manja dealt lathi blows to them also. According to him, the incident was witnessed

by Kallu (PW-2), Bihari (PW-3), Premabai (PW-4), Vimlabai (PW-5), Durga (PW-8) and some other persons. After assaulting, accused persons ran away from the spot. He lodged the First Information Report (Exhibit P/1) at Police Station Dharampur. He, Gaya and Badda were sent to Primary Health Centre, Dharampur where their injuries were examined. On the next day, in the morning, Badda died at Ajaygarh hospital. This witness was subjected to a lengthy cross-examination, but nothing could be elicited to disbelieve his evidence in respect to appellants Kaura and Manja. However, when he was confronted with his case diary statement (Exhibit D/1), it was revealed that he did not disclose before the police that appellant Bhaiyalal inflicted any injury to Badda. This fact was also not found mentioned in the First Information Report (Exhibit P/1) lodged by him. In cross-examination, he admitted that the relations between him and appellants were not strained, rather were cordial. He denied that he, Premabai, Vimlabai, Bihari, Chotelal and Durga Prasad assaulted appellants by lathis. He also denied that the Banyan tree fell down on Badda and Gaya when they were sitting for 'Panchayat' under it.

10. The evidence of Betu (PW-1) is substantially corroborated by the evidence of Kallu (PW-2), Bihari (PW-3), Premabai (PW-4), Vimlabai (PW-5) and Durga (PW-8) who categorically stated that appellants Manja and Kaura assaulted Badda and that Manja also assaulted Betu and Gaya. Though they also stated that appellant Bhaiyalal dealt a lathi blow on the shoulder of Badda when he fell down, but this fact was found conspicuously missing in their respective case diary statements. Other contradictions appearing in their evidence do not relate to any material aspect of the case, affecting their credibility.

11. We have closely scrutinized the evidence of Vimlabai (PW-5) who happened to be a child of about 10 years age, but we do not find any indication therein that she was prompted or tutored by anybody. The evidence of Betu (PW-1) with respect to appellants Kaura and Manja is also corroborated by the First Information Report (Exhibit P/1) lodged by him just after two hours of occurrence.

12. We are not impressed by the argument advanced by the learned counsel for the appellants that the evidence of eyewitnesses is inconsistent with the medical evidence. It is true that Dr. M.S. Tomar (PW-15) who initially examined the injuries of Badda and Gaya, found one incised wound on the skull of each of them, which according to him were caused by a sharp edged weapon. On perusal of the evidence of Dr.V.S.Upadhyay (PW-11), who performed the post mortem examination of the dead body of Badda, it is seen that he found one contusion on the clavicle bone and a lacerated wound on the parietal bone of the deceased. In his opinion both the injuries were caused by hard and blunt object. In view of this inconsistency, perhaps, learned counsel for the appellants submitted that eyewitnesses' account was not trustworthy. Dr.M.S.Tomar (PW-15) in his evidence admitted that many times it happens that when an injury is caused by a stick on the parietal region of the skull it looks like an injury caused by a sharp edged weapon. He also stated

that the injury found on the head of Gaya was not possible by falling of branch of the tree. According to Dr.M.S.Tomar, at the time when Badda was brought to him, his pulse was feeble, his pupils were dilated and he was unconscious. He had, therefore, referred him for X-ray examination and treatment to Primary Health Centre, Ajaygarh. It appears that in view of the serious condition of Badda, Dr.M.S.Tomar (PW-15) hastily and cursorily examined his injuries, whereas Dr.V.S.Upadhyay (PW-11) examined the injuries on his dead body minutely. Dr.M.S.Tomar (PW-15) did not speak about the injury found on the clavicle region of Badda. The evidence of Dr.V.S.Upadhyay (PW-11) appears more reliable if examined in juxtaposition of the evidence of eyewitnesses who stated that appellants Manja and Kaura inflicted lathi blows on the head of the deceased. In paragraph No.11 of the impugned judgment, the Trial Court has considered this aspect of the case elaborately. We find no ground to disagree with the finding of the Trial Court that the injuries to the deceased, Betu (PW-1) and Gaya were caused by lathis.

13. Taking into consideration the evidence of eyewitnesses and the evidence of Dr.V.S.Upadhyay (PW-11), we feel satisfied that the appellants Kaura and Manja assaulted Badda (deceased), Betu (PW-1) and Gaya with lathis and as a result of the injury caused on the head of Badda, parietal bone of his skull was fractured and he ultimately died, and Betu (PW-1) and Gaya suffered simple injuries. However, in view of the fact that none of the eyewitnesses disclosed in their case diary statements that appellant Bhaiyalal dealt any lathi blow to Badda and that there was absolutely no evidence on record that he caused any injury to Betu (PW-1) and Gaya, a serious doubt is created about his participation in the incident. Accordingly, we set aside his conviction under Section 302/34 of the Indian Penal Code. He is acquitted.

14. The question now before us is whether the appellants Kaura and Manja have been rightly convicted under Section 302 of the Indian Penal Code. The defence of the appellants is two fold. According to them, Gaya, Bihari, Kallu, Chotelal, Durga and Betu assaulted them with lathis as a result of which they suffered injuries and when the members of the complainant party including the deceased and Gaya were holding 'Panchayat' under a Banyan tree, one of its branch broke down and fell on them as a result of which Badda and Gaya suffered injuries. In support of this plea, appellants examined Hemprasad (DW-2) who testified that Badda, Durga, Gaya and Betu had beaten the appellants with lathis due to past enmity and when they were going to lodge the report with the police, on his intervention both the parties sat beneath a Banyan tree for 'Panchayat' and then suddenly a branch of the tree fell down on Badda due to which he suffered injury on his head. In our opinion, it is difficult to place reliance on the evidence of this witness. As per defence version, appellant Bhaiyalal lodged a report at the Police Station against the complainant party of having assaulted them with lathis. This report (Exhibit D/1) was recorded by Head Constable Baijnath Mishra (DW-1) in Roznamcha S.No.209 at about 10:30 pm on 08.08.1997. Baijnath Mishra

(DW-1) admitted that at about 9:00 pm on the same day, Betu (PW-1) also lodged the report which was recorded in Roznamcha S.No.212. Bhaiyalal, his brothers Manja and Kaura were sent for medical examination and on the report by Betu (PW-1), he, Badda and Gaya were sent for medical examination. In the report (Exhibit D/1), there is absolutely no mention that Betu, Badda and Gaya suffered any injury by fall of a branch of the Banyan tree. This inevitably renders the evidence of Hemprasad (DW-2) unworthy of reliance.

15. Dr.M.S.Tomar (PW-15), has testified that he had medically examined appellants Manja, Kaura and Bhaiyalal in the night of 08.08.1997 and had found a swelling and an abrasion on the finger and wrist of appellant Manja, one laceration on the head and one swelling on the wrist of the left hand of appellant Bhaiyalal, and one abrasion on the left shoulder of appellant Kaura. Their injury reports are Exhibit D/7, D/8 and D/9 respectively. Since these injuries were simple in nature and were not visible, the prosecution was not obliged to explain these injuries, but at the same time from the aforementioned material it stands established that appellants also received injuries in the same incident in which deceased, Betu and Gaya were injured.

16. It must be noted that Dr.M.S.Tomar (PW-15) as well as Dr.V.S.Upadhyay (PW-11), both, found only one injury on the head of Badda which resulted into his death. None of the two doctors stated that the said injury was sufficient to cause his death. According to Dr.M.S.Tomar (PW-15), it was, however, dangerous to life. All the eyewitnesses have stated that appellants Manja and Kaura, each dealt one lathi blow, on his head. Thus, it is difficult to hold as to which of the two appellants caused injury on his head. Taking into consideration the fact that the appellants also suffered injuries in the same incident, in the fact situation of the case, it is not possible for us to hold that appellants Kaura and Manja intended to cause the death of Badda. However, in these circumstances, it can be held that appellants Manja and Kaura knew that by their acts they were likely to cause his death, making themselves liable to be convicted under Section 304 Part-II of the Indian Penal Code.

17. For the foregoing reasons, we set aside the conviction of appellants Kaura and Manja under Section 302/34 of the Indian Penal Code and the sentence of imprisonment for life, instead, convict them under Section 304 Part-II read with 34 of the Indian Penal Code and sentence them to rigorous imprisonment for five years. Their conviction under Section 323/34 of the Indian Penal Code is affirmed. Appellant Manja, who has undergone whole of the sentence awarded to him, shall be released forthwith, if not required in any other case. Appellant Kaura Prasad, who is on bail shall surrender to serve out the remaining sentence. Appellant Bhaiyalal is acquitted. He is on bail, his bonds shall stand discharged.

18. Appeal is partly allowed.

Appeal partly allowed.

I.L.R. [2008] M. P., 3316
APPELLATE CRIMINAL
Before Mr. Justice K.S. Chauhan
8 July, 2008*

DHAPU BAI & anr. ... Appellants
Vs.
STATE OF M.P. ... Respondent

Penal Code (45 of 1860), Sections 302, 304 Part II - *Murder or culpable homicide not amounting to murder - Appellant convicted u/s 304 Part II of I.P.C. - Held - In the light of medical evidence, it cannot be accepted that the injuries were not sufficient to cause death - On the contrary, it is found that the ocular evidence adduced by prosecution has been medically corroborated - Since the deceased was having 19 injuries, therefore, it can be said that she was beaten severely.* (Para 15)

दण्ड संहिता (1860 का 45), धाराएँ 302, 304 भाग II – हत्या या हत्या की कोटि में न आने वाला सदोष मानव वध – अपीलार्थी को भा.द.सं. की धारा 304 भाग II के अन्तर्गत दोषसिद्ध किया गया – अभिनिर्धारित – चिकित्सीय साक्ष्य के प्रकाश में यह स्वीकार नही किया जा सकता कि क्षतियाँ मृत्यु कारित करने के लिए पर्याप्त नही थीं – इसके विपरीत यह पाया गया कि अभियोजन द्वारा पेश प्रत्यक्ष साक्ष्य की चिकित्सीय साक्ष्य से सम्पुष्टि हुई – चूंकि मृतक को 19 क्षतियाँ आयीं, इसलिए, यह कहा जा सकता है कि उसे निर्दयता पूर्वक पीटा गया।

Sandeep Dubey, for the appellants.
S.K. Kashyap, Dy.G.A., for the respondent/State.

JUDGMENT

K.S. CHAUHAN, J. :– Four persons were charge-sheeted and prosecuted, out of them two have been acquitted. The present appellants were also acquitted from the charges under Section 498-A and 302 of I.P.C. but convicted and sentenced under Section 304-II of I.P.C. who are before us in this appeal.

2. This Criminal Appeal under Section 374(2) Cr.P.C. has been filed being aggrieved by the judgment, finding and sentence dated 21.01.1994 passed by II Additional Sessions Judge, Sehore (Camp Nasrullaganj) in Sessions Trial No.97/1990, whereby the appellants have been convicted under Section 304-II of I.P.C. and sentenced to R.I. for 7 years.

3. The prosecution case in short is that Dhapu Bai was married with Ramesh. Appellant No.1-Dhapu Bai is her mother-in-law and appellant No.2-Krishna Bai is her sister-in-law. They are of not good character. Usually several persons used to visit them and stay with them. They were involved in such illegal business. They also induced her to do the same but she denied, therefore, they used to cause her marpeet. She could not tell this thing to her parents because of the

*Cr.A. No.103/1994 (Jabalpur)

threatening given by the appellants. On 04.02.1990 Moti Patel was sitting at her house. Her mother-in-law was making tea for him. She was cleaning the utensils. One bowl could not be cleaned well on this pretext her mother-in-law and sister-in-law gave her severe beating by hitting her head with the stone and inflicting iron rod. On account of which she sustained injuries in different parts of her body. She lodged F.I.R. on 06.02.1990 at P.S. Nasrullaganj wherein Crime No.20/1990 under Sections 342, 333 and 498-A I.P.C. was registered. She was sent for medical examination to P.H.C. Nasrullaganj where she was examined by Dr. S.K.Dhoble (PW-11) who found 16 injuries on her person. He also advised for x-ray. Medical report is Ex.P/25. Since the x-ray machines of Nasrullaganj and Sehore hospitals were not in working condition, therefore, she was referred to Hamidiya Hospital, Bhopal. She died on 07.02.1990 on the way to Bhopal. Its information was given to P.S. Nasrullaganj by her father Narmada Prasad (PW-1). On the same day Marg No.4/1990 under Section 174 Cr.P.C. was registered at P.S. Nasrullaganj. The inquest report Ex.P/2 was prepared. The postmortem examination was done by Dr. D.K.Satpathi (PW-14), Director, Medico Legal Institute, Bhopal. He found 19 injuries on her person. According to him the death was due to shock as a result of multiple injuries to the body. Injuries have been caused by hard and blunt object within 5 days to 2 weeks and duration of death within 48 hours ± 12 hours since postmortem examination. Death was homicidal in nature. Postmortem report is Ex.P/16 which contains his signature. Offence under Section 302 of I.P.C. was added. Map was prepared. The appellants were arrested. Their disclosure statements were recorded. In pursuance of their disclosure statements, weapon of offence Mogri and Saria were seized from them. Seized articles were sent to F.S.L., Sagar for chemical examination from where the report received. Statements of the witnesses were recorded. After completing the investigation, charge sheet was filed in the Court of J.M.F.C., Nasrullaganj.

4. Appellants stood charged under Section 498-A and 302 of I.P.C. They denied the guilt and claimed to be tried mainly contending that they have been falsely implicated. Prosecution examined as many as 14 witnesses and appellants also examined 1 witness in defence. After appreciating the evidence, trial court acquitted them from the charge under Sections 498-A and 302 of I.P.C. but convicted under Section 304-II of I.P.C. and sentenced thereunder as stated hereinabove in para No.2 of the judgment. Being aggrieved by the judgment, finding and sentence passed by trial Court, instant appeal has been preferred on the grounds mentioned therein.

5. Shri H.S.Dubey was engaged by the appellant as his counsel but he did not appear to argue the case on the date of hearings on 26.04.2008 and 02.05.2008. The appeal is pending since 1994, therefore, Shri Sandeep Dubey has been appointed from the panel of the High Court Legal Aid Services Committee to argue the case on behalf of appellants so that the appeal may be disposed of expeditiously.

6. Shri Sandeep Dubey, learned counsel for the appellants submitted that there is delay in lodging the report. The deceased was not in a position to lodge the report, therefore, no reliance can be placed on F.I.R. (Ex.P/12). The independent witnesses have not supported the prosecution case. No grievous injury was found on her person. There is no medical evidence that the injuries were sufficient in the ordinary course of nature to cause her death. The seizure of the weapon of offence has also not been strictly proved. The finding of guilt is erroneous which deserves to be set aside and the appellants are entitled for acquittal.

7. On the contrary, Shri S.K. Kashyap, learned Dy.G.A. appearing on behalf of respondent/State supported the impugned judgment, finding and sentence mainly contending that deceased was severely beaten by these appellants on account of which she sustained several injuries and died. There is ample evidence against the appellants. Prosecution has proved the case beyond reasonable doubt against the appellants and trial Court has rightly convicted and sentenced them, therefore, it does not call for any interference.

8. The main point for consideration in this appeal is that whether trial Court has committed any illegality in convicting and sentencing the appellants under Section 304-II of I.P.C.?

9. The incident is of 04.02.1990 at about 7-8 p.m. in her in-laws house situate at Sarvhara Colony, Nasrullaganj. F.I.R. was lodged by deceased Dhapu Bai on 06.02.1990 at 12:15 p.m. It is borne out from the evidence of Narmada Prasad (PW-1) that on 05.02.1990 when he was going to see his elder daughter Kanchan Bai during that course he came to see Dhapu Bai also. He saw that her condition was bad. Therefore, he asked appellants to send her with him but they denied. Anyhow he managed to carry her by the jeep of Motilal Patel to village Gopalpur. Appellant No.2 Krishna Bai also accompanied with them and after leaving deceased Dhapu Bai at Gopalpur at about 1:00 p.m. Krishna Bai returned with Motilal by the same jeep to Nasrullaganj. Since Narmada Prasad (PW-1) could not get any means of transportation to carry her to Nasrullaganj on that day, therefore, he could not bring her to Police Station Nasrullaganj to lodge the report. On 06.02.1990 he came there where Dhapu Bai herself lodged the report (Ex.P/12) which was written by B.R.Yadav (PW-9). He has clearly stated that Dhapu Bai signed this report before him. He has nowhere stated that she was not in a position to lodge the report. Delay has already been explained by Narmada Prasad (PW-1). The explanation is satisfactory. Appellant No.2-Krishna Bai accompanied Dhapu Bai not account of any humanity but to see that Dhapu Bai should not lodge the report. She accompanied to save herself from the clutches of law. Otherwise there was no any reason to accompany her and returned back immediately by the same jeep. Therefore, the contention of the learned counsel of appellants that there is delay in lodging the F.I.R. and she was not in a position to lodge the F.I.R. is not acceptable in the light of the prosecution evidence available on record.

10. Since F.I.R. Ex.P/12 was lodged by deceased herself, therefore, it becomes her dying declaration after her death. Her statement Ex.P/13 was also recorded by B.R.Yadav (PW-9) and this statement also becomes dying declaration after her death. On perusal of these documents it is manifestly clear that appellants caused her marpeet on account of which she sustained the injuries, therefore, the defence that the father of the deceased Dhapu Bai wanted to give her in 'Natra' to other person and, therefore, he gave her beating is not acceptable in the light of the F.I.R. (Ex.P/12) and her statement Ex.P/13. She had described in great detail the manner and method in which she was given severe beating and the cause of such beating. There is nothing to disbelieve such a dying declaration given by deceased herself.

11. Apart from her dying declaration, the prosecution has adduced the evidence regarding oral dying declaration given by deceased to several persons.

12. Narmada Prasad (PW-1) has deposed that his daughter told her that appellant used to cause her marpeet by Mogri and iron rod to involve in illegal activities with other persons who used to visit their house on and off and on declining she was given severe beating. On that day itself he saw marks of injuries on the body of his daughter. His testimony is supported by his son Bhagwan Singh (PW-6) and other witnesses Ramadhar (PW-2), Shankar Singh (PW-5), Kanchan Bai (PW-7) and Ramawtar (PW-8). These witnesses have categorically stated that they saw the injuries on the person of Dhapu Bai who told them that these injuries were cased by appellants. The testimonies of these witnesses have not been shattered in cross examination and their evidence is intact on the material particulars.

13. Dr. S.K. Dhoble (PW-11) medically examined Dhapu Bai on 06.02.1990 who found 16 injuries on her person as described in great detail in medical report Ex.P/25. He has clearly stated that these injuries would have been caused by hard and blunt object. Injury Nos.1, 3, 4, 6, 11 to 16 were simple in nature and x-ray was advised to ascertain the nature of other injuries. Since it has been brought on record that x-ray machines of Nasrullaganj and Sehore hospitals were not in working condition, therefore, she was referred to Hamidiya Hospital, Bhopal but on the way she succumbed to injuries. Thus, x-ray could not have been done in these circumstances.

14. Dr.D.K.Satpathi (PW-14), Director, Medico Legal Institute, Bhopal conducted postmortem examination on 08.02.1990 and found 19 injuries on her dead body as described in great detail in postmortem report Ex.P/16. He has opined that death was due to shock as a result of cumulative effect of the injuries to the dead body. Injuries have been caused by hard and blunt object within 5 days to 2 weeks and duration of death was 48 hours ± 12 hours since postmortem examination. Death was homicidal in nature. He has deposed in his evidence that injury No.19 was itself sufficient to cause death and the cumulative effect of the other injuries was also sufficient to cause death.

15. In the light of the this medical evidence, the argument of learned counsel for the appellants is not tenable that the injuries were not sufficient to cause death. On the contrary, it is found that the ocular evidence adduced by prosecution has been medically corroborated. Since the deceased was having 19 injuries, therefore, it can be said that she was beaten severely. If her father has not reached their by chance then she would have died in her in-laws house on account of these injuries.

16. S.K.Shukla (PW-10) on 08.02.1990 arrested the appellants vide arrest memo Ex.P/6 and recorded their disclosure statements Ex.P/7 and Ex.P/8 and in pursuance thereof seized Mogri from appellant No.1-Dhapu Bai vide seizure memo Ex.P/9 and iron rod from appellant No.2-Krishna Bai vide seizure memo Ex.P/10. From his evidence, it is evidently clear that the weapons of offence were recovered at the instance of these appellants. Dr. S.K.Dhoble (PW-11) has clearly stated that injuries to Dhapu Bai would have been caused by seized article 'A' Mogri and article 'B' iron rod. The seized articles were also sent to F.S.L., Sagar for chemical examination from where the report received. Accordingly blood stains were found on Articles A, E1, E1, E3, E4 and E5. Likewise it is proved by Serologist report Ex.P/22 that item No.1 Godri and item No.2 Rajai were found stained with human blood. Thus, the prosecution case further finds support by F.S.L. Report Ex.P/22.

17. On analysis of entire evidence adduced by prosecution, it is manifestly clear that the prosecution has proved the case beyond reasonable doubt against these appellants. Trial Court has dealt with every aspect of the matter in great detail and has rightly convicted them hence no illegality, infirmity or perversity is found in such finding. The finding of guilt is hereby affirmed. Sentence being not excessive does not call for any interference. The appeal is meritless and deserves to be dismissed.

18. Consequently, appeal fails and is dismissed accordingly. Appellants are on bail. Their bail bonds are cancelled. They be directed to surrender before C.J.M., Sehore on 08.08.2008 for serving out the remaining part of sentence.

Appeal dismissed.

I.L.R. [2008] M. P., 3320
APPELLATE CRIMINAL

Before Mr. Justice S.K. Kulshrestha & Mrs. Justice Manjusha P. Namjoshi

21 July, 2008*

NASA ... Appellant
Vs.
STATE OF M.P. ... Respondent

Penal Code (45 of 1860), Sections 302, 304 Part-II - *Murder or*

*Cr.A. No.775/1999 (Indore)

culpable homicide not amounting to murder - *Accused caused serious injuries on skull of his brother by heavy log like 'Kharaliya' - Eye-witness saw the accused striking over the head, chin and chest of deceased - F.I.R. lodged by father - Narration of incident by the eye-witness corroborated by other witnesses - Held - Accused caused number of injuries on vital part of body i.e. scalp - The injuries so caused clearly indicate the intention of the appellant to commit murder of the deceased - Act of appellant falls u/s 302 - Conviction and sentence affirmed - Appeal dismissed.* (Paras 9, 10, 11 & 12)

दण्ड संहिता (1860 का 45), धाराएँ 302, 304 भाग II – हत्या या हत्या की कोटि में न आने वाला सदोष मानव वध – अभियुक्त ने अपने भाई के सिर पर 'खरलिया' जैसे भारी लट्ठे से गम्भीर क्षतियाँ कारित कीं – प्रत्यक्षदर्शी साक्षी ने अभियुक्त को मृतक के सिर, ठोढ़ी और छाती पर प्रहार करते देखा – एफ.आई.आर. पिता द्वारा दर्ज कराई गई – प्रत्यक्षदर्शी साक्षी द्वारा दिये घटना के वृत्तांत की अन्य साक्षियों द्वारा पुष्टि की गई – अभिनिर्धारित – अभियुक्त ने कई क्षतियाँ शरीर के मर्मस्थल अर्थात् सिर पर कारित कीं – कारित क्षतियों से यह स्पष्ट रूप से दर्शित होता है कि अपीलार्थी का आशय मृतक की हत्या कारित करना था – अपीलार्थी का कृत्य धारा 302 के अन्तर्गत आता है – दोषसिद्धि और दण्डादेश पुष्ट – अपील खारिज।

Sonali Gupta, for the appellant.

Girish Desai, Dy.A.G. with *Mamta Shandilya,* Panel Advocate, for the respondent/State.

JUDGMENT

The Judgment of the Court was delivered by **S.K. KULSHRESTHA, J.** :– THIS appeal is directed against the judgment dated 21st April, 1999 of the learned Addl. Sessions Judge, Sendhwa, in Sessions Trial No. 121/98, whereby the appellant has been convicted under Section 302 and sentenced to imprisonment for life and fine of Rs.1,000/-.

2. The case relates to the murder of Peetaram by his brother accused Nasa. Gallu (PW 4) is the father of the deceased and the accused, who lodged FIR (Ex.P/5) and Amnabai (PW 10) is the wife of deceased Peetaram. According to the case of the prosecution, Gallu (PW 4) had six sons including accused and the deceased. He had already partitioned the land among his sons and they were living separately. His son Richha had shifted to Maharashtra about a decade and a half ago. In respect of the land of his son Richha, there was dispute as it was being cultivated by the accused. On 9/1/1998 when Peetaram and Nasa both had gone to Sendhwa to sell cotton, on their return to village Japdipadla, prompted by the dispute of land, they quarreled. When Ranji (PW 5), uncle of the accused and the deceased, tried to intercede, he also received injury of 'Kharaliya'; a vertical log on which bullock-cart rests. However, the quarrel subsided on intervention of Ranji. At about 11.00 p.m., accused Nasa went to the house of Peetaram and assaulted him with 'Kharaliya' with the result Peetaram fell down and died instantaneously. On the report (Ex.P/5) having been lodged by Gallu (PW 4), a

case u/S. 302 of the IPC was registered. Ranji was sent for medical examination while the dead body of Peetaram was sent for autopsy, of which report Ex.P/11 was received. As per the statement of Dr. Mannalal Pawar (PW 11), Autopsy Surgeon, and his report Ex.P/11, the deceased received as many as eight injuries, as extracted hereinbelow :-

(1) Lacerated wound 4 cm x 1 cm x fracture of mandible, (left half shaft);

(2) Lacerated wound 3 cm x ½ cm x upto bone – left temporal region of head;

(3) Bruise – reddish black 10 x 2 cm left lower costal region in mid axillary line;

(4) Bruise – reddish black 8 x 2 cm – medial to injury No.3.

(5) Haemotoma 5 x 5 cm left fronto temporal region under skin,

(6) Haemotoma 10 x 10 cm right parito temporal region under skin;

(7) Fracture of midline of right parietal bone to right fronto temporal region upto outer orbit region, blood clot under membrane in area 10 x 8 cm underneath. Fracture bone (injury No.3) with laceration of right parietal lobe, temporal lobe and frontal lobe in area of 5 x 5 cm.

In his opinion, the Doctor stated that mode of death was coma produced by head trauma.

3. In further sequel of investigation, the clothes of the deceased were seized from the Hospital. On the basis of the memo of the accused, a 'Kharaliya' was recovered from him and after recording the statements of witnesses, the accused was prosecuted.

4. The accused denied having committed any offence and stated that he was innocent. The learned Judge, however, found the appellant guilty and convicted and sentenced him as hereinabove stated. It is against this conviction and sentence that the present appeal has been filed.

5. Learned counsel for the appellant submits that the prosecution has deliberately divided the incident in two parts to show that the accused had caused injury to his deceased brother later while, in reality, Ranji (PW 5), uncle of the accused and the deceased, had sustained injury in the same transaction. She has further stated that in any case, the offence would not traverse beyond Sec. 304 Part II of the IPC.

Learned State counsel submits that it is a case where brother has killed his own brother and the evidence of parents clearly indicates that the offence was committed by the appellant for no ostensible reason and, therefore, the conviction does not call for any interference.

6. We have heard the learned counsel for the parties and perused the record.

7. The prosecution examined 12 witnesses, but eye witness account was rendered by Ranji (PW 5), Sitaram (PW 8) and Amnabai (PW 10). We may clarify that Ranji (PW 5) is the uncle of the accused, Sitaram (PW 8) is his brother and Amnabai (PW 10) is the wife of the deceased.

8. In order to have a first glimpse at the prosecution story, it would be proper to first consider the testimony of Sitaram (PW 8), brother of the deceased and the accused. Gallu (PW 4) has stated that when his sons were returning, there ensued a quarrel between Nasa and Peetaram with regard to the cultivation of the land, but he had separated them with the result all of them went to their respective houses. Thereafter he heard scream of Amnabai (PW 10) and when he rushed to the place, he saw that Nasa was assaulting deceased Peetaram with 'Kharaliya'. He saw injuries on his face and lips. Peetaram, on account of the deadly assault, fell down while Nasa ran away. If his testimony is examined apposite the testimony of Sitaram (PW 8), Sitaram has fully corroborated the testimony of Amnabai (PW 10). She has also stated that on hearing alarm raised by the deceased when she rushed to the place of the incident, she saw the accused striking over the head of Peetaram, chin and chest. The evidence is further corroborated by Jirbhan (PW 6), brother of Ranji (PW 5). Jirbhan (PW 6) has stated when, on alarm being raised by Amnabai, he rushed to the place, he saw that accused Nasa was running away and he had the log in his hand while Peetaram was lying in a pool of blood.

9. The FIR (Ex.P/5) of the incident was lodged by Gallu (PW 4). Gallu (PW 4) has deposed that when he heard the cries, he rushed to the place and found that Peetaram was having an injury on his head and other places and had died instantaneously. He had been told by Amnabai that Peetaram had been assaulted by the accused with a 'Kharaliya'. Accordingly, he went to report the matter to the Police Station. He has confirmed having made the report Ex.P/5.

10. Even the arrest and seizure made by U.R.Waman (PW 9) have been supported by Darbar (PW 1) and Surpal (PW 2). In presence of Surpal, inquest had taken place, while Darbar is a panch witness to the arrest and seizure of Kharaliya. Ex.P/18, however, states that on account of the fact that the blood was disintegrated, no opinion could be given with regard to the origin of the blood.

11. In addition, Ranji (PW 5) and Jirbhan (PW 6) have deposed that on hearing the alarm raised by Amnabai, they rushed to the place and found that Nasa was running away and Peetaram was lying injured on the ground.

12. From the narration of the incident by the eye witnesses and by the witnesses who support on the basis of circumstances including Jirbhan (PW 6) and Sukhlal (PW 7), we find that prosecution has fully succeeded in proving the guilt of the accused. The contention of the counsel, however, is that the offence would not fall within the description of offence punishable u/S. 302 of the IPC. We have already referred to the injuries of the deceased caused by the appellant by a heavy log like Kharaliya. The injuries include two lacerated wounds, two bruises

and two haemotomas with fracture of skull. The appellant had selected a vital part of the body namely; scalp and caused a number of injuries. The injuries so caused clearly indicate the intention of the appellant to commit murder of the deceased. Accordingly, we find no substance in this appeal. The appeal is dismissed.

Appeal dismissed.

I.L.R. [2008] M. P., 3324
APPELLATE CRIMINAL
Before Mrs. Justice Sushma Shrivastava
28 July, 2008*

SURESH ... Appellant
Vs.
STATE OF M.P. ... Respondent

A. Penal Code (45 of 1860), Section 376, Evidence Act, 1872, Section 3 - ***Appreciation of evidence*** - *Prosecutrix, who had lodged the F.I.R., was not examined as she could not be traced - Appellant convicted on the basis of hearsay evidence - Held - In absence of the evidence of prosecutrix, who was an adult married women, the mere hearsay statement of witness that the husband was complaining of rape with his wife by the appellant, was not sufficient to establish that appellant committed rape with her.* (Para 10)

क. दण्ड संहिता (1860 का 45), धारा 376, साक्ष्य अधिनियम, 1872, धारा 3 – साक्ष्य का अधिमूल्यन – अभियोक्त्री, जिसने एफ.आई.आर. दर्ज कराई, का परीक्षण नही किया गया क्योंकि उसका पता नही लगाया जा सका – अपीलार्थी को अनुश्रुत साक्ष्य के आधार पर दोषसिद्ध किया गया – अभिनिर्धारित – अभियोक्त्री, जो कि एक वयस्क विवाहित महिला थी, की साक्ष्य के अभाव में, साक्षी का केवल अनुश्रुत कथन कि पति ने उसकी पत्नी के साथ अपीलार्थी द्वारा बलात्कार करने की शिकायत की, यह स्थापित करने के लिये पर्याप्त नही था कि अपीलार्थी ने उसके साथ बलात्संग किया।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 154, Penal Code, 1860, Section 376 - ***F.I.R.*** - *F.I.R. by itself is not a substantive piece of evidence - In absence of evidence of the prosecutrix, the averments made in the F.I.R. could not be acted upon as the evidence of commission of rape by the appellant with her.* (Para 11)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154, दण्ड संहिता, 1860, धारा 376, – एफ.आई.आर. – स्वयं एफ.आई.आर. साक्ष्य का सारभूत अंग नही है – अभियोक्त्री के साक्ष्य के अभाव में, एफ.आई.आर. में किये गये प्रकथनों पर अपीलार्थी द्वारा उसके साथ बलात्संग करने के साक्ष्य के रूप में कार्यवाही नही की जा सकती।

Case referred :

AIR 1992 SC 2043.

None, for the appellant.

Sudesh Verma, G.A., for the respondent/State.

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*Cr.A. No.566/1994 (Jabalpur)

JUDGMENT

SUSHMA SHRIVASTAVA, J. :–Appellant has preferred this appeal against his conviction and order of sentence passed by Session Judge, Betul in S.T. No.18/94, decided on 2.5.94.

2. Appellant has been convicted under Section 376 of IPC and sentenced to rigorous imprisonment for seven years by the impugned judgment.

3. According to prosecution, on 24.12.93, prosecutrix was going to Betul by bus alongwith her husband in search of work. Prosecutrix and her husband had to get down from the bus, as her husband had vomits. When he got better, both prosecutrix and her husband boarded the milk van driven by the appellant for reaching their destination. On way at village Theska, appellant offered them food at his nearby house and also brought food. After they finished their food, appellant asked the husband of the prosecutrix to go and sleep in the bus, but did not allow the prosecutrix to go with her husband. After her husband had gone to sleep in the bus, appellant forcibly committed sexual intercourse with the prosecutrix. Prosecutrix narrated the whole incident to her husband when she met him in the morning and lodged the FIR at Police Station, Jhallar. On the basis of her report, an offence was registered against the appellant and was investigated. Prosecutrix was sent for medical examination. On the arrest of the appellant, he was also sent for medical examination. The petticoat of the prosecutrix and vaginal slide prepared during her medical examination as well as underwear of the appellant and his semen slide were seized by the Police and were sent for forensic examination. After due investigation, appellant was prosecuted under Section 376 of IPC and was put to trial.

4. Appellant abjured the guilt and pleaded false implication.

5. Learned Session Judge, after trial and upon appreciation of the evidence adduced in the case, found the appellant guilty of committing rape with the prosecutrix, convicted and sentenced him under Section 376 of IPC as aforesaid by the impugned judgment. Hence, this appeal.

6. Appeal is preferred mainly on the ground that the trial court gravely erred in convicting the appellant under Section 376 of IPC without there being evidence of the prosecutrix on record or any other material against him.

7. Perused the evidence on record. Admittedly, the prosecutrix and her husband were not examined, as they could not be found and served after the alleged incident of rape. The trial court convicted the appellant on the basis of the evidence of the conductor of Matador, namely, Arun (P.W-3) coupled with the averments made in the FIR (Ex.P-8), which was recorded by A.S.I. M.L. Gathe (P.W-5). However, P.W-3 Arun himself was not a witness to the alleged incident of rape. P.W-3 Arun simply deposed in his evidence that a husband and his wife had boarded the Matador of the appellant near village Jhallar and they had slept in his house at village Theska and sometime thereafter they were quarrelling and the husband

was complaining that appellant had committed rape with his wife. However, P.W-3 Arun nowhere stated in his evidence that he heard any screams of the prosecutrix or she ever complained to him of rape by the appellant. Rather he clearly deposed in his cross-examination that when the husband was complaining of rape with his wife by the appellant, his wife had kept mum and she was asleep.

8. There was no other evidence on record against the appellant regarding commission of rape. Dr. Smt. Nisha Badhve (P.W-2), who examined the prosecutrix, did not find any injuries or signs of struggle on her body. She did not give any opinion about commission of rape with her. Although, as per evidence of M.L. Gathe (P.W-5), petticoat of the prosecutrix was seized, but there was no report of chemical examiner on record to indicate that any sperms or semen stains were found on her petticoat.

9. Appellant, after his arrest, was also sent for medical examination by A.S.I. M.L. Gathe (P.W-5), but there was no medical evidence or any material on record to indicate that any scratch marks or any other sign of commission of rape were found on his body.

10. In the aforesaid circumstances and in absence of the evidence of prosecutrix, who was an adult married woman, the mere hearsay statement of P.W-3 Arun that the husband was complaining of rape with his wife by the appellant, was not sufficient to establish that appellant committed rape with her. Similarly, the statement of P.W-1 Ramprasad that the Police personnel informed him of the commission of rape by the appellant, did not have any evidentiary value.

11. Needless to emphasize that the FIR by itself is also not a substantive piece of evidence. In absence of evidence of the prosecutrix, the averments made in the FIR (Ex.P-8) could not be acted upon as the evidence of commission of rape by the appellant with her. A.S.I. M.L. Gathe (P.W-5), who recorded the FIR (Ex.P-8), also did not depose that the FIR was recorded as per version of the prosecutrix.

12. In fact, there was no legal evidence on record, either direct or circumstantial, to hold the appellant guilty for commission of offence of rape with the prosecutrix. Even in the case cited and relied upon by the trial court reported in AIR 1992 Supreme Court page 2043 it was held that there must be some other evidence available for proving the criminal act of the accused, if the victim is dead and could not be examined. However, in the instant case, there was no legal evidence on record to hold that appellant committed rape with the prosecutrix.

13. Thus, the trial court gravely erred in convicting the appellant under Section 376 of IPC without any legal evidence on record.

14. Appeal is, therefore, allowed. The conviction of appellant and sentence passed on him under Section 376 of IPC are set aside. Appellant is acquitted of the charge.

Appellant is on bail. His bail bonds shall stand discharged.

Appeal allowed.

I.L.R. [2008] M. P., 3327
APPELLATE CRIMINAL
Before Mr. Justice S.A. Naqvi
6 August, 2008*

VINOD KUMAR ... Appellant
Vs.
STATE OF M.P. ... Respondent

A. Evidence Act (1 of 1872), Sections 35, 62, 63 & 65 - *Birth and Death Register* - *Witness bringing original birth and death register maintained at police station regularly and proved entry regarding date of birth of prosecutrix - Held - Death and birth register regularly maintained at police station - Entries are made on the basis of Kotwari book - Entry in original register was made in 1975 by a public servant - Entry made in register by public servant in discharge of his official duty in respect of relevant fact is primary evidence - Original register cannot be treated as secondary evidence.* (Para 12)

क. **साक्ष्य अधिनियम (1872 का 1), धाराएँ 35, 62, 63 व 65 – जन्म और मृत्यु रजिस्टर** – साक्षी पुलिस थाने पर नियमित रूप से कायम रखे गये जन्म और मृत्यु रजिस्टर को लाया और अभियोक्त्री की जन्मतिथि सम्बन्धी प्रविष्टि साबित की – अभिनिर्धारित – जन्म और मृत्यु रजिस्टर पुलिस थाने पर नियमित रूप से कायम रखा गया – प्रविष्टियाँ कोटवारी पुस्तक के आधार पर की जाती हैं – मूल रजिस्टर में प्रविष्टि लोक सेवक द्वारा 1975 में की गई – लोक सेवक द्वारा अपने कार्यालयीन कर्तव्य के निर्वहन में रजिस्टर में की गई प्रविष्टि सुसंगत तथ्य के बारे में प्राथमिक साक्ष्य है – मूल रजिस्टर को द्वितीयक साक्ष्य नही माना जा सकता।

B. Evidence Act (1 of 1872), Section 3 - *It is settled principle of law that if authentic date of birth of the prosecutrix that is to say, evidence in respect of age of prosecutrix is available then opinion of doctor on the basis of ossification test can be discarded.* (Para 7)

ख. **साक्ष्य अधिनियम (1872 का 1), धारा 3** – विधि का यह स्थापित सिद्धांत है कि यदि अभियोक्त्री की प्रमाणिक जन्मतिथि अर्थात् अभियोक्त्री की आयु के सम्बन्ध में साक्ष्य उपलब्ध हो तब चिकित्सक द्वारा ऑसीफिकेशन टेस्ट के आधार पर दी गयी राय अमान्य की जा सकती है।

C. Penal Code (45 of 1860), Section 376 - *Rape* - *Prosecutrix below 16 years of age - Appellant took her knowingly that she will be seduced to illicit intercourse and committed sexual intercourse though with her consent - Act of appellant comes within purview of Section 375(Sixthly) - Appellant rightly convicted - Appeal dismissed.* (Para 13)

ग. **दण्ड संहिता (1860 का 45), धारा 376 – बलात्संग** – अभियोक्त्री की उम्र 16 वर्ष से कम – अपीलार्थी यद्यपि उसकी सहमति के साथ उसे यह जानते हुए ले गया कि उसे अयुक्त संभोग करने के लिए विलुब्ध करेगा और मैथुन कारित करेगा – अपीलार्थी का कृत्य धारा 375(छटवाँ) के क्षेत्र में आता है – अपीलार्थी उचित रूप से दोषसिद्ध – अपील खारिज।

*Cr.A. No.285/1994 (Jabalpur)

Cases referred :

2002(2) MPLJ 405, AIR 1973 SC 396, AIR 2008 Bom 81, 2002(3) MPLJ 371.

Jagat Sher Singh, for the appellant.
Aseem Dixit, P.P., for the respondent/State.

JUDGMENT

S.A. Naqvi, J. :–Challenge is to the judgment dated 18.02.1994 passed by Additional Sessions Judge, Dindori, District Mandla in S.T. No. 87/91 whereby the appellant Vinod Kumar has been convicted u/s 366A and 376 of the IPC and sentenced to suffer 5 years rigorous imprisonment and fine of Rs.1,000/- and 7 years rigorous imprisonment and fine of Rs.1,000/- in default 6 months rigorous imprisonment to each count.

2. The case of the prosecution, in short, is that on 14.1.1991 at about 8-9 p.m. Prosecutrix (PW 7) went to call of nature. She was returning back to her house. On way to the house the appellant Vinod Kumar caught her hold and took her forcibly to Amarkantak road. Next morning the appellant took the prosecutrix by bus to Amarkantak and then Anooppur. The appellant kept prosecutrix in his rented house. The appellant committed rape with the prosecutrix in the house. He committed rape with prosecutrix for three days and three nights. Ram Gopal her cousin and brother-in-law rescued her and took her to Manikpur. FIR was lodged on 8.2.1991 in police station Samnapur. Prosecutrix was medically examined, she was x-rayed. Slides were prepared from her vaginal smear. Her sari was seized. Seized articles were sent for chemical analysis. Statements of witnesses were recorded u/s 161 of Cr.P.C. After completion of investigation, the appellant was charge-sheeted. The case was committed to the courts of session for trial.

3. Learned trial Court framed charge u/s 366A and 376 of IPC. The appellant abjured the guilt and pleaded innocent and false implication. His defence is that due to enmity he has been falsely implicated.

4. Prosecution examined 10 witnesses. The appellant examined 3 witnesses in defence. After hearing learned counsel for both the parties, perusing the evidence and material on record, learned trial Court convicted the appellant u/s 366A and 376 of IPC and sentenced him hereinabove mentioned. The appellant has preferred the appeal being aggrieved of the impugned judgment.

5. I have heard learned counsel for both the parties, perused the impugned judgment, evidence and material on record.

6. Learned counsel for the appellant vehemently argued that document Ex.P/12 is not admissible in evidence, because it is secondary evidence, being prepared on the basis of Kotwari book which has not been produced and proved by prosecution, the age of the prosecutrix is above 18 years, prosecutrix is consenting party hence, the appellant can not be convicted u/s366A and 376 of IPC and

learned trial Court committed error in convicting the appellant as aforementioned. Contrary to that learned public prosecutor submitted that Ex.P12 is copy of register of concerned police station in respect of date of birth which is maintained by public servant in regular course of duty, this document is admissible u/s 35 of the Evidence Act and this document is not within the purview of secondary evidence. Learned trial Court did not commit any error in convicting the appellant and sentencing him as aforementioned.

7. The crucial question in this criminal appeal is in respect of age of the prosecutrix (PW 7). Prosecutrix deposed that her age was 15 years at the relevant time. Brother of the prosecutrix Saddu Singh (PW 1) deposed that age of the prosecutrix was 15 years. Father of the prosecutrix Prem Singh (PW 8) also deposed that age of the prosecutrix was 15 years. None of these witnesses were able to give her (Prosecution) date of birth. Dr. Indumati Vishwakarma (PW 4) deposed that on 8.2.1991 she took x-ray of shoulder joint, knee joint, wrist joint and buttock of the prosecutrix, after examining x-ray plates, Ex.P/2 to Ex.P/5 she opined that age of the prosecutrix is in between 17 years to 20 years, as per report Ex/P/6. It is settled principle of law that if authentic date of birth of the prosecutrix, that is to say, evidence in respect of age of the prosecutrix is available then opinion of Doctor on the basis of ossification test can be discarded.

8. Prem Singh (PW 8) in para 13 of his cross-examination deposed that he is father of 13 children his eldest son expired, if he would have been alive his age would have been 13-14 years. Prosecutrix is youngest daughter. He specifically deposed that the name of all children were written alongwith date of birth in Kotwar Book. In para 12 of his cross-examination Prem Singh deposed that he went alongwith Kotwar to police station and Inspector saw date of birth of the prosecutrix in Kotwar book and wrote her (Prosecutrix) date of birth. This statement of Prem Singh relates to the date, after the incident. It is clear from the evidence of Prem Singh that date of birth of the prosecutrix was entered in Kotwari book by Kotwar at the relevant time.

9. Shiv Vratt Tirki (PW 10) was posted as Head constable in police station Samnapur. He deposed that in police station birth and death register is regularly maintained. He brought original register from 1975 to 31.12.1976. He proved document Ex.P/12-C on the basis of original register, which he took back after completion of his evidence . As per Shiv Vratt Tirki (PW 10), the date of birth of Sadhna Bai daughter of Prem Singh is entered as 28.9.1975. There is evidence on record that prosecutrix is also known as Sadhna Bai hence, this entry in Ex.P12-C relates to the prosecutrix. Learned counsel for the appellant relying upon *Sukhia @ Sushma v. Gambhira* 2002 (2) M.P.L.J. 405 urged that no original document is produced, no foundation was laid to establish the right to give secondary evidence, hence, document Ex.P/12-C being secondary evidence is not admissible in evidence. Para 9 of the citation is relevant para which relates to lease deed.

10. Learned counsel for the appellant relying on *Kalyan Singh v. Smt. Chhoti and anothers* AIR 1973 SC 396, *Bank of Inda v. M/s. Allibhoy Mohammed & Ors.* AIR 2008 Bom. 81 and *Sunil Kumar and another v. Anguri Choudhari and another* 2002(3) M.P.L.J. 371 vehemently argued that original register of that document Ex.P/12-C is secondary evidence u/s 63(3) of Evidence Act and unless the requirement of provisions of section 65 of the Evidence Act are not fulfilled, secondary evidence is not admissible, hence Ex.P/12-C is inadmissible in evidence. In case of *Sunil Kumar* (Supra) true copy of the original document was produced and it was not a certified copy of that document compared with the original hence, the document was held to be inadmissible in evidence. In case of *Bank of India* (Supra), it has been held that secondary evidence can not be accepted unless sufficient reason is given for non-production of original document as envisaged in section 65 of the Evidence Act. In *Kalyan Singh case* (Supra) it has been held that ordinary copy of registered sale deed is not a secondary evidence and it can not be admitted in evidence. On going through the aforementioned citations it is clear if a document is within purview of secondary evidence u/s 63 of the Evidence Act it can be proved under provision of Section 65 of the Evidence Act. The question hinges that whether the register of birth and death maintained in police station is a secondary evidence or primary evidence ?

11. It is clear from the evidence of Shiv Vratt Tirki (PW 10) that register in respect of birth and death is regularly maintained in police station on the basis of entries in Kotwari book. After entering into date of birth in register in police station, Kotwari book be returned to Kotwar. Entry in original register in respect of date of birth of prosecutrix was entered in 1975 by another Moharir of the police station Samnapur at the relevant time. It is not disputed that head constable moharir of the police is a public servant. It is proved by the evidence of Shiv Vratt Tirki (PW 10) that in regular course of his duty head constable mohrir regularly maintains birth and death register in police station on the basis of Kotwari book or at the information of the Kotwar. Section 35 of the Evidence Act reads as under:

> **"35. Relevancy of entry in public(record or an electronic record) made in performance of duty.-** An entry in any public or other official book, register or (record or an electronic record) , stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or (record or an electronic record) is kept, is itself a relevant fact."

12. On going through the section 35 of the Evidence at it is clear that if an entry in public or other official book or register and record or in electronic record stating a fact in issue or relevant fact made by public servant in discharge of his official duty is itself a relevant fact, which means to say that if an entry is made in a register by public servant in discharge of his official duty in respect of relevant

fact is primary evidence u/s 62 of the Evidence Act, and not secondary evidence u/s 63 of the Evidence Act. Original register in relation to document Ex.P/12 -C is regularly maintained by a public servant in police station Samnapur which is an official register and record hence, the original register can not be termed as secondary evidence u/s 63(3) of the Evidence Act, because the original register is not a copy made from or compared with original Kotwari book, entry in police station register is original entry on the basis of Kotwar book and it is not a copy made from or compared with original book, hence I hold that the register of birth and death maintained in police station Samnapur of which Ex.P/12-C is a copy is not secondary evidence, but it is primary evidence. Shiv Vratt Tirki (PW 10) at the time of evidence brought original register in the Court at the time of his examination, copy of register Ex.P12-C was kept in record and original register was returned back. The original register being a public document, hence it is not necessary to examine the scriber of the register its copy which is produced in the Court after going through original register is admissible in evidence hence, because it relates to the year 1975 to 31.12.76 and it is regularly maintained in police station, hence document Ex.P/12-C is admissible in evidence. The forgoing citations do not help in any way to the appellant. The arguments advanced by the learned counsel for the appellant are devoid of merit. Ex.P/12-C is a genuine document, in which date of birth of the prosecutrix is written as 28.9.75. Hence, it is proved beyond reasonable doubt that date of birth of the prosecutrix is 28.9.75. Incident occurred on 14.1.1991 hence, it is proved that on the date of the incident age of the prosecutrix was below 16 years and learned trial Court did not commit any error in holding that the ate of the prosecutrix was below 16 years at the time of the incident hence I affirmed finding arrived at by learned trial Court.

13. Though it has not been challenged during the course of argument that the appellant took away prosecutrix (PW 7) from village Samnapur and kept her in Nainpur in a rented house and committed sexual intercourse with her, but I think apposite to consider prosecution evidence in this respect. Prosecutrix (P.W.7) deposed that on the fateful night she went to evacuate in garden. After evacuating she was about to come back appellant came there and took her forcibly on the point of knife to Amarkantak and then Anooppur, where he committed sexual intercourse with her. Thereafter she was recovered from the possession of the appellant from Anooppur and she lodged F.I.R. Ex. P/9. Prem Singh (PW 8) also deposed that her daughter prosecutrix was missing. He searched her, but could not find her. Ultimately she was found in Anooppur and she was recovered from the possession of appellant. She narrated whole incident to him. Saddu Singh (PW 1), Gangaram (PW 2), Ramgopal (PW 3) and Dadua (PW 9) also corroborated testimony of the prosecutrix and Prem Singh. On going through the evidence of these witnesses there appears no infirmity in their statements on material points they remained firm and consistent. Evidence of these witnesses is corroborated by F.I.R. Ex.P/9. Their evidence is reliable and it is proved that the prosecutrix

eloped with the appellant and the appellant committed sexual intercourse with her more than once and ultimately she was recovered from the possession of the appellant.

14. Learned trial Court in para 35 of the judgment came to hold that the prosecutrix was a consenting party and she voluntarily eloped with the appellant. On going through the evidence of the prosecutrix(P.W. 7), it is clear that she went place to place alongwith the appellant and she never complained or called any one to rescue her. The conduct of the prosecutrix proves that she was a consenting party and learned trial Court on sound reasoning rightly held that the prosecutrix voluntarily eloped and she was a consenting party.

15. The prosecutrix (PW 7) is a married woman. She is wife of Gangaram (PW 2). At the time of the incident she was living with her parents. On going through the evidence of Gangaram (PW2), Prem Singh (PW 8) and prosecutrix (PW 7) it is crystal clear that appellant took the prosecutrix and enticed her to get her consent to go with him without consent or permission of her parents and husband with intent to force her illicit intercourse. At the time of the incident age of the prosecutrix was below 16 years. As per section 366A who ever by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place and to do any act with intent that such girl may be, or knowing that it is likely that she will be forced or seduced to illicit intercourse shall be punishable under this section. It is proved that the appellant took the prosecutrix whose age was under 16 years knowingly that she will be seduced to illicit intercourse and he committed sexual intercourse with the prosecutrix though with her consent. At that time the age of the prosecutrix was below 16 years hence the act of the appellant of committing sexual intercourse with prosecutrix though with her consent comes within the purview of section 375(Sixthly) of IPC. Hence, it is proved beyond doubt that the appellant has committed offence u/s 366 A and 376 of IPC.

16. As per above discussion, I am of the view that the learned trial Court did not commit any error in convicting the appellant of the charge u/s 366A and 376 IPC looking to the facts and circumstances of the case the jail sentence awarded by learned trial Court is adequate and no interference is warranted in the order of sentence, consequently impugned judgment of conviction and order of sentence is hereby affirmed.

17. Consequently, appeal has no merit, deserves to be and is hereby dismissed. The appellant is on bail his bail bond stands discharged. He is directed to surrender forthwith before the trial Court to undergo the remaining part of the jail sentence otherwise learned trial Court is directed to issue non-bailable warrant against the appellant and commit him to jail to undergo the remaining part of the jail sentence.

Appeal dismissed.

I.L.R. [2008] M. P., 3333
APPELLATE CRIMINAL
Before Mrs. Justice Indrani Datta
17 October, 2008*

RADHA (SMT.) ... Appellant
Vs.
STATE OF M.P. ... Respondent

Penal Code (45 of 1960), Sections 306 & 107 - *Abetment to commit suicide - Abetment of suicide u/s 306 involves a mental process of instigating a person or intentionally aiding that person in doing of a thing - More active role which can be described as instigating or aiding doing of a thing is thus required before a person can be said to be abetting suicide - Cruel or insulting behaviour cannot be taken an act of abetting suicide - Ingredients of Section 306 IPC not established - Conviction of accused found to be improper.*
(Para 18)

दण्ड संहिता (1960 का 45), धाराएँ 306 व 107 – आत्महत्या करने का दुष्प्रेरण – धारा 306 के अन्तर्गत आत्महत्या के दुष्प्रेरण में, किसी व्यक्ति को उकसाने की मानसिक प्रक्रिया या उस व्यक्ति को कोई कार्य करने में साशय सहायता देना, अन्तर्ग्रस्त है – इस प्रकार किसी व्यक्ति को आत्महत्या के लिए दुष्प्रेरित करना कह सकने के लिए, अधिक सक्रिय भूमिका जो कोई कार्य करने के लिए उकसाना या सहायता देने के रूप में वर्णित की जा सकती है, आवश्यक है – क्रूर या अपमानजनक व्यवहार को आत्महत्या के लिए प्रेरित करने वाला कार्य नही माना जा सकता – भा.द.सं. की धारा 306 के घटक स्थापित नही हुए – अभियुक्त की दोषसिद्धि अनुचित पायी।

Cases referred :

1995 AIR SCW 4570, AIR 1994 SC 1418, AIR 2002 SC 1998, 2008 AIR SCW 320.

Y.S. Tomar, for the appellant.
R.D. Agrawal, Panel Lawyer, for the respondent/State.

JUDGMENT

INDRANI DATTA, J. :–This appeal has been preferred against the judgment of conviction and sentence dated 20.08.2001 passed by 10th Additional Sessions Judge, Gwalior in S.T. No.239/94 by which the appellant and other co-accused Bhagirath (died during the pendency of appeal) have been convicted under Section 306 IPC and sentenced to undergo 3 years R.I.

2. The case of the prosecution in brief is that deceased Ramkunwar is the mother of Bhagirath and appellant Radha is daughter-in-law of deceased. Deceased, appellant Radha and Bhagirath (dead) used to reside in different rooms of one house. Appellant and co-accused Bhagirath used to ill-treat, harass and beat the deceased in order to kick her out from the house and get the vacant

*Cr.A. No.464/2001 (Gwalior)

December-08 (first)

possession of the room. On 4.6.1994 appellant and co-accused assaulted and gave beating to the deceased. Deceased was fed-up with all these harassment and committed suicide on 5.6.94 at about 12. 0' clock in the noon by pouring kerosene on herself. Deceased was admitted in J.A. Hospital Gwalior by Babulal her son (PW-7). Dr. V.S. Tomar (PW-11) and Dr. Y.K.Diwan (PW-9) medically examined the deceased. Ex.P/15 and P/12 are their reports.

PW-8 Chimansingh Jadon S.I. on receiving information from J.A. Hospital Gwalior reached to hospital and recorded dying declaration (Ex.P/10) of deceased. Dying declaration (Ex.P/6) was also recorded at 1.40 p.m. by PW-3 Dr. Mamta Gupta. Deceased died on 7.6.94 in Kamla Raja Hospital. Marg No.21/94 (Ex.P/11) was registered by PW-8 Chimansingh Jadon. Spot map was prepared by PW-12 Ram Ujagar Singh Yadav S.I. and Katta, kerosene oil and match-box were seized as per Ex.P/5 from the place of incidence. Lash Panchayatnama (Ex.P/3) was prepared. Autopsy of dead body was conducted by Dr. R.C.Upadhyay (PW-10). Cause of death was found to be burning. Ex.P/14 is postmortem report. S.I. Ram Ujagar Singh Yadav lodged Ex.P/16 FIR after marg intimation. After investigation, charge-sheet was filed in the court of Chief Judicial Magistrate, Gwalior, from where the case was committed to the Court of Sessions.

3. Appellant and other co-accused were charged for committing offence punishable under Section 306 IPC and after conclusion of trial the learned 10th ASJ convicted the appellant and co-accused under Section 306 IPC and sentenced them as stated above, hence this appeal.

4. The contention of the learned counsel for the appellant is that the prosecution witnesses have not supported the prosecution. Dying declarations Ex.P/6 and P/10 in no way establish that appellant had abetted the suicide. These dying declarations atmost disclose that relation of appellant and deceased were not cordial. They were always disputing. It may be that deceased committed suicide on account of this but this cannot be taken to be an act of abetting the suicide and appellant is liable to be acquitted.

5. Learned counsel for the State on the other hand has supported the impugned judgment of the trial court.

6. In case of *Mahinder Singh v. State of M.P.* (1995 AIR SCW 4570), it is held that in case of alleged abetment of suicide there must be number of direct or indirect acts of incitement to the commission of suicide. The mere fact that husband treated the wife with cruelty is not enough.

7. In case of *State of West Bengal v. Orilal Jaiswal* (AIR 1994 SC 1418) Hon'ble Apex Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it transpires to the

Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in the Act as an offence. A person, abets the doing of a thing when (1) he instigates any person to do that thing, or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. 'Abetted' in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.

8. In case of *Sanju @ Sanjay Singh Sengar v. State of M.P.* (AIR 2002 SC 1998) the Hon'ble Apex Court considered various decisions and held that a charge of an offence under Section 306 is not sustainable merely on the allegation of harassment to the deceased particularly when ingredients of abetment are not attracted on the statement of deceased or witnesses. Apex Court considered as under;-

> In *Swamy Prahaladdas v. State of M.P. & Anr.* 1995Supp.(3) SCC 438, the appellant was charged for an offence under Section 306 I.P.C. on the ground that the appellant during the quarrel is said to have remarked the deceased 'to go and die'. This Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even prima facie enough to instigate the deceased to commit suicide.

In *Mahendra Singh v. State of M.P.*, 1995 Supp.(3) SCC 731, the appellant was charged for an offence under Section 306 I.P.C. basically based upon the dying declaration of the deceased, which reads as under;

> "My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."

This Court, consider the definition of 'abetment' under Section 107

I.P.C., found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the state of the deceased.

In *Ramesh Kumar v. State of Chhattisgarh* (2001) 9 SCC 618, the Hon'ble Apex Court while consider the charge framed and the conviction for an offence under Section 306 I.P.C. on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire. Acquitting the accused this Court said;

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires tot he court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged and such petulance discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide to commit suicide, The conscience of the court should not be satisfied for basing a finding that the accused charged for abetting the offence of suicide should be found guilty."

It was ultimately found that even if accused did tell the deceased 'to go and die', that itself did not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that words uttered in a quarrel in a spur of the moment cannot be taken to be uttered with mens rea. It is just a fit of anger and emotional distress, without intending any consequence.

9. On the above principle of law laid down whether offence charged under Section 306 IPC is made out against the appellant is to be considered by scrutiny of evidence produced by the prosecution.

10. Prosecution has examined 12 witnesses in all. Main evidence that has been produced and used for levelling accusation against the appellant is dying declarations Ex.P/6 and P/10 recorded by S.I. Chimansingh Jadon and Dr. Mamta Gupta. Other witnesses are PW-1 Meera, PW-2 Bhimsingh, PW-7 Babulal son of deceased, PW-4 Hemlata & PW-6 Anguri, daughters-in-law of deceased, PW-5 Shakuntala, Hemlata's mother. All were declared hostile by the prosecution and have not fully supported the prosecution case.

11. PW-2 Bhimsingh and PW-7 Babulal sons of deceased though declared hostile have, however, stated that appellant and co-accused were having sour relations with deceased and used to beat and harass her. PW-2 Bhimsingh has further deposed that Ramkunwar poured kerosene oil on her due to this harassment. PW-4 Hemlata daughter-in-law of deceased has narrated in her examination-in-chief that in hospital Ramkunwar told her that she was fed-up so she burnt herself. As per her statement appellant used to quarrel with deceased. PW-6 Anguri daughter-in-law of deceased has also stated that PW-5 Shakuntala and Parvati (not examined) were present at the time of incident as they were gone to the house of deceased in order to perform compromise between the deceased and appellant.

12. In this way, it is proved from the statement of above prosecution witnesses that appellant and co-accused used to ill-treat and harass the deceased. Even then for an offence punishable under Section 306 IPC it is required to be proved beyond doubt that appellant has actively suggested or stimulated to the deceased to the act by means of language direct or indirect where it takes the form of solicitation or hints, insinuation or encouragement. The word "instigate" means to goad or urge, forward or to provoke, incite, urge or encourage to do an act. With respect to this other evidence produced is to be seen.

13. Other incriminating evidence as per the prosecution are two dying declarations Ex.P/6 and P/10 recorded on 5.6.94 at 1.40 p.m. Dying Declaration (Ex.P/6) is recorded by Dr. Mamta Gupta PW-3 in question & answer form which reads as under;-

Question :	What is your name?
Answer :	Ramkunwar.
Question :	Where do you reside?
Answer :	Loko
Question :	What is the name of your husband?
Answer :	Raghunath
Question :	Whether any body set fire on you?
Answer :	No, my elder daughter-in-law (lame) and elder son in drunken condition had beaten me by means of stick the I have burnt myself in noon at about 12.0'clock.
Question :	Whether you want to say anything more?
Answer :	No.

In Ex.P/6 there is note "B" to "B" written by Dr. Mamta Gupta (PW-3) that when statement was recorded deceased was fully conscious and was not under any effect of drug or alcohol.

14. From the perusal of Ex.P/6 and prompt statement of Dr. Mamta Gupta (PW-3) it appears that this dying declaration is properly recorded and hence fully reliable and there is no reason to disbelieve Dr.Mamta Gupta.

15. Second dying declaration (Ex.P/10) is recorded at 1.40 p.m. by PW-8 Jadon in question & answer for which reads as under;-

Question :	What is your name?
Answer :	Ramkunwar.
Question :	What is the name of your husband?
Answer :	Raghunath Kohli
Question :	Where do you reside?
Answer :	at Loko in a lane situated near Jhanda Dhari Hanuman.
Question :	Who resides in your home?
Answer :	I have four sons and four daughters-in-law.
Question :	How you got burnt?
Answer :	My elder son Bhagirath and his wife used to beat me and object my residing in house, being fed-up I poured kerosene on me and set fire.
Question :	Whether anybody else set fire on you?
Answer :	No.
Question :	Whether you want to say anything more?
Answer :	My elder son got the job in place of my husband and Bhagirath and his wife harass me.

So far as the second dying declaration (Ex.P/10) is concerned this dying declaration is not properly recorded and hence not reliable. PW-8 Chimansingh Jadon has stated that he recorded the dying declaration of deceased at 1.40 p.m. on 5.6.94. In cross-examination he has stated that he recorded her dying declaration seven minutes before 1.40 p.m. and recording was completed at about 1.40 p.m. Dr. Mamta Gupta (PW-3) has stated in her cross-examination that she recorded dying declaration of deceased 10 minutes before 1.40 p.m. and completed recording at 1.40 p.m. So when PW-3 Dr. Mamta Gupta was recording the dying declaration of deceased 10 minutes before 1.40 p.m. how is it possible that PW-8 Chimansingh Jadon was recording the dying declaration of deceased 7 minutes before 1.40 p.m. Second point which makes dying declaration Ex.P/10 unreliable and doubtful is that it is not recorded in presence of any witness or even a ward boy or any member of staff of hospital who must be available at that time. There is no note in Ex.P/10 that deceased was in a fit and proper condition and was fully conscious to give statement. So Ex.P/10 is doubtful and unreliable.

16. So far as the Ex.P/6 dying declaration is concerned, even assuming that Ex.P/6 is reliable and properly recorded even then actual instigation on the part of appellant inducing deceased to commit suicide cannot be inferred. It cannot be presumed that appellant by her conduct created such circumstances that deceased was left with no option except to commit suicide as presence of mens rea is necessary concomitant of instigation. There is nothing on record to show that appellant wanted or intended that deceased should commit suicide.

17. From the above discussion and oral evidence of prosecution witnesses as well as from dying declaration Ex.P/6 it appears that there was some domestic dispute between the deceased, co-accused and appellant in the previous night of incidence. Deceased has committed suicide not on the same night but on the next day at 12. 0'clock in the noon. Even assuming co-accused and appellant used to harass and ill-treat the deceased even then essential ingredients for making out offence under Section 306 IPC is not made out.

18. In case of *Sohan Raj Sharma v. State of Haryana* (2008 AIR SCW 320) it is observed by Hon'ble Apex Court that abetment of suicide under Section 306 involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. More active role which can be described as instigating or aiding doing of a thing is thus required before a person can be said to be abetting suicide. In that case wife committed suicide after giving poison to her children. Suicide note described accused husband as sexual pervert. It was stated that accused was impotent and was tying to defame her. She had clearly mentioned that she wanted to take his life. His cruel or insulting behaviour cannot be taken an act of abetting suicide. Ingredients of under Section 306 IPC was not established and conviction of accused found to be improper.

19. Relying on above principle of law after analyzing the prosecution evidence it is not proved that appellant has abetted the deceased to commit suicide. Appellant, therefore, deserves to be acquitted of charge under Section 306 IPC.

20. Resultantly, the appeal is allowed. Conviction of appellant under Section 306 IPC and sentenced passed thereon is set aside. Appellant is on bail. Her bail bonds and surety bonds stand discharged.

Appeal allowed.

I.L.R. [2008] M. P., 3339
APPELLATE CRIMINAL
Before Mrs. Justice Indrani Datta
7 November, 2008*

RAMHET & ors. ... Appellants
Vs.
STATE OF M.P. ... Respondent

Penal Code (45 of 1860), Section 304 Part II r/w Section 149 - ***Culpable homicide not amounting to murder*** *- Injuries were simple in nature - No injury on vital part of deceased - Deceaced died after 4 days of incident - Autopsy was conducted twice by Medical Board - No definite opinion of doctors that death was due to sustained injuries - In post-mortem, it was found that the deceased was suffering from advance tuberculosis, bleeding from lungs resulting in failure of heart and respiratory system - FSL report*

*Cr.A. No.501/2002 (Gwalior)

was not produced - Held - It cannot be presumed that the simple injuries inflicted on non-vital parts with knowledge that it is likely to cause death or to cause such bodily injury as is likely to cause death in normal course of nature - Offence u/s 304 Part II not made out. (Paras 15 to 18)

दण्ड संहिता (1860 का 45), धारा 304 भाग II सहपठित धारा 149 – हत्या की कोटि में न आने वाला सदोष मानव वध – क्षतियाँ साधारण प्रकृति की थीं – मृतक के मर्मस्थल पर कोई क्षति नही – मृतक की घटना के 4 दिन बाद मृत्यु हुई – मेडीकल बोर्ड द्वारा शव–परीक्षा दो बार की गयी – चिकित्सकों की कोई निश्चित राय नही कि मृत्यु आयी क्षतियों के कारण हुई – शव–परीक्षण में यह पाया गया कि मृतक गंभीर क्षय रोग से पीड़ित था, फेंफड़ों से रक्त स्राव के परिणामस्वरूप हृदय और श्वसन–तंत्र विफल हुआ – एफ.एस.एल. रिपोर्ट पेश नही की गई – अभिनिर्धारित – यह उपधारणा नही की जा सकती कि साधारण क्षतियाँ गैर मर्मस्थलों पर इस ज्ञान के साथ पहुँचाई गई कि इससे मृत्यु कारित करना या ऐसी शारीरिक क्षति कारित करना संभाव्य है जिससे प्रकृति के सामान्य अनुक्रम में मृत्यु कारित होना संभाव्य है – धारा 304 भाग II के अन्तर्गत अपराध नही बनता।

Prateep Bisoria, for the appellants.

R.D. Agrawal, Panel Lawyer, for the respondent/State.

J U D G M E N T

INDRANI DATTA, J. :–This appeal is preferred against the judgment of conviction and sentence dated 9.9.2002 passed by Shri R.K.Jain Fourth Additional Sessions Judge (Fast Track Court), Shivpuri in S.T.No.108 of 1999 by which, the appellants-accused have been convicted under Section 148, 304 Part II/149, 325/149 (Four counts) and 323/149 (Three counts) of Indian Penal Code and sentenced to undergo rigorous imprisonment for 18 months with fine of Rs.100/- each under section 148 of IPC, Five years rigorous imprisonment with fine of Rs.200/- each under Section 304 Part II read with section 149 of IPC, two years rigorous imprisonment with fine of Rs.100/- each under section 325/149 (four counts) and Three months Rigorous imprisonment with fine of Rs.100/- each under Section 323/149 (three counts). All the sentences are to run concurrently and in default of payment of fine, they are further directed to undergo 15 days, 1,1 and 1 month's RI respectively.

2. The case of prosecution in brief is that on 2.10.1998 complainant Bhamru S/o Bhulla Jatav (PW6) lodged Dehati Naliahsi Ex.P/16 in injured condition at Police Station Sirsaud that appellants no.1 to 4 Ramhet, Dara Singh, Madho Singh and Hakim Singh assaulted him and his brother Govinda (PW15) on previous night at 8 PM. Next morning i.e. on 2.10.1998 while they were going on bullock cart to lodge report accompanied with Rajaram (PW14) Ramdayal (PW12), Manphool (PW16), Parsadi (PW11), Gore (PW13), deceased Pragi, Bhimma (PW18), Sripati (PW2) and Kripasi (PW17) and when they reached Sirsaud Shivpuri Road near Gas Pipeline, they saw appellants/accused and co-accused armed with farsa, lathi, luhangi and axe. Appellants-accused and other co-accused started beating them

by means of above weapons and inflicted injuries to Gore (PW13), Bachnu (PW11), Amroo (PW10), Santo (PW19) Ginni (PW1), Rajaram (PW14), Govinda (PW15), Ramdayal (PW12), Manphool (PW16) and Parsadi (PW11). Imrat, Khargi, Pritam, Lohare, Hazari, Pragi, Bhimma, Kripasi and Sripati ran away from the spot and appellants chased them for beating.

On the basis of Dehati Nalishi, First information report Ex.P/47 was lodged. All injured were sent for medical examination. Skiagraphy of injured Rajaram (PW14), Parsadi (PW11), Bhamra (PW8) and Manphool (PW16) was conducted and fracture of fibula metacarpal bone, right clavicle and left radius bone which is Ex.P/4 to P/11 was detected. Pragi died after four days of the incident. Autopsy on the dead body of deceased Pragi was conducted two times. Farsa, lathi, luhangi and axe were seized as per Ex.P/30 to P/37, Ex.P/39 to P/45 from all the appellants-accused and other co-accused by D.S.Bhadoria (PW26) Investigating Officer. Spot map Ex.P/7 was prepared. After investigation, charge sheet was filed in the Court of CJM, Shivpuri from where, the case was committed to the court of session.

3. The appellants with other co-accused were prosecuted, charged and tried for committing offence under Section 302/149, 325, 324 and 323/149 of IPC. Learned trial court acquitted co-accused Jagannath, Maniram and Uttam Singh under section 148, 302/149, 325, 324 and 323/149 of IPC. The appellants were acquitted of the offence under Section 302/149 and 324 of IPC but convicted under Section 148, 304 Part II/149, 325/149 (four counts) and 323/149 (three counts), hence, this appeal.

4. Learned counsel for the appellants-accused confined his arguments only on the point that the offence under section 304 Part II of IPC is not made out against appellants-accused. It is urged that from medical evidence, it is not proved that deceased died due to sustained injuries. It is prayed that the appellants be acquitted.

5. Learned counsel for the State on the other hand has supported impugned judgment of the trial court.

6. Considered the contentions advanced by learned counsel for the parties and perused the record of the case.

7. To prove its case, the prosecution has examined 31 witnesses. Bhamru (PW8) is eye witness of the incident. He has narrated about two incidences. First in the previous night at about 8 PM. As per his statement, prior to the day of incidence, his brother Govinda (PW15) told him that appellants-accused and co-accused assaulted him near the well. When he complained about this matter to appellant Hakim Singh, all appellants-accused and co-accused assaulted him by means of lathi and axe in the night at about 8 PM. Thereafter, next day morning when he was going to lodge report along with Govind (PW15), Pragi (deceased), Rajaram (PW14), Manphool (PW16), Gore (PW13), Pragi, Bhimma (PW18), Sriwati (PW2) and Kripasi (PW17), appellants-accused armed with axe lathi, farsa

and luhangi assaulted them and started beating them with their respective weapons. He sustained injuries. Bachnu (PW10) Parsadi (PW11), Pragi, Rajaram (PW14), Manphool (PW16), Amroo (PW9), Lohare (PW29) and Gore (PW13) also sustained injuries. This witness has further deposed that appellant Rorilal assaulted deceased Pragi by means of lathi. Appellant Ramhet assaulted the deceased by means of axe and other appellants-co-accused assaulted deceased Pragi by means of lathi. Pragi sustained injuries everywhere on the body below neck and on the ribs. Pragi was admitted in the hospital who died due to these injuries after three days. The statement of this witness is further corroborated by the statement of Imrat (PW3), Amroo (PW9), Parsadi (PW11), Ramdayal (PW12), Gore (PW13) Rajaram (PW14), Govind (PW15), Manphool (PW16), Bhimma alias Brahamma (PW18) and Santo (PW19) who are injured witnesses and they were present on the spot. From the statement of eye witnesses, it is proved that the appellants-accused assaulted the deceased Pragi and these witnesses and deceased Pragi died due to sustained injuries in the incident.

8. So far as injuries sustained by all these injured witnesses are concerned, evidence in this respect is not to be scrutinized because, learned counsel for the appellants does not challenge the finding of trial court with respect to the conviction of appellants under Section 148, 325/149 (four counts and 323/149 (three counts).

9. So far as finding of trial court in respect of holding appellants-accused guilty under Section 304 Part II of IPC is concerned, before holding an accused guilty under Ist or IInd Part of Section 304 of IPC, death must have been caused by appellants-accused under any of the circumstance mentioned in five exceptions to Section 300 of IPC is to be proved. For constituting the offence under Section 304 Part II of IPC, it is to be seen that :

(i). act is done with knowledge that it is likely to cause death but without any intention to cause death; or

(iii). to cause such bodily injury as is likely to cause death;

10. To derive to a conclusion that whether appellants/accused inflicted injuries to deceased with knowledge that their act is likely to cause his death or to cause such bodily injury which is likely to cause his death, nature of injuries sustained by deceased is to be seen.

In this behalf, medical evidence is to be observed. Deceased Pragi was medically examined on 2.10.1998 by Dr. M.P.Barua (PW21). He found following injuries :

(i). Swelling 1"X1"on the mid and front of left thigh; ;

(ii). Swelling 1/2"X1/2" on the left knee joint area of in front;

(iii). Abrasion 1/4" X 1/4" with swelling in the mid of left forearm;

(iv). Abrasion 1/4" X 1/4" on the tip of right ring finger;

As per medical report Ex.P/27 and statement of Dr. Barua (PW21), all the injuries were simple in nature and were caused by hard and blunt object.

11. The deceased died on 6.10.1998, thereafter autopsy on the dead body was conducted by Medical Board consisting Dr. Govind Singh (PW4), Dr.R.V.Sharma (PW6), Dr.H.P.Gupta (PW22) and Dr. A.P.Shrivastava who found following injuries on the body of deceased :

(i). Lacerated wound on the posterior aspect of left forearm over ulna 1CM X 4MM;

(ii). An abrasion on anterior aspect of left knee 1CM X 1CM, no swelling found;

(iii). Nail bed injury on the distal 1/3rd of the right ring finger distal 1/4rth of nail severed transversely attached;

(iv). Tiny abrasions on lateral aspect of elbow;

All these injuries were detected in Postmortem Ex.P/1. Dr. Govind Singh (PW4) and Dr. R.V.Sharma (PW6) and Dr. Gupta (PW22) including other doctors opined that the deceased had advance tuberculosis of lungs which resulted into massive fatal haemoptosis and pulmonary oedema. The death was due to bleeding from lung. In cross-examination para 10, Dr. Gvoind Singh (PW4) has deposed that as per Medical Board's opinion, definite reason of death of deceased can only be given after FSL report.

12. In this way, entire medical evidence of Dr. Govind Singh (PW4) and Dr. R.V.Sharma (PW6) and Dr. Gupta (PW22) and report Ex.P/1 is not sufficient to arrive at the conclusion that the deceased died due to the sustained injuries. All the injuries found on the body of deceased are simple in nature. No injury was found on vital part of the body of deceased. Postmortem was conducted by Medical Board and doctors have not opined that deceased died due to sustained injuries.

13. Dr. J.N.Soni (PW31) along with a panel of doctors again conducted autopsy on the dead body of deceased Pragi and found following injuries as per his report Ex.P/48A:

(i). Abrasion 1CM over right medial epiconlyl with scab;

(ii). Contusion over right tip of right ring finger blueish in colour with separation of upper part of the nail;

(iii). Abrasion over left knee 1CM X 1CM scab present;

(iv). Abrasion with scab 3X0.5CM transversely placed;

(v). Abrasion with scab over left leg nearly mid over shin of tibia 1X0.5CM vertical;

(vi). Abrasion over left thigh 4CM X 0.5CM scab present;

(vii). Lacerated wound below left elbow 1.5CM X 1CM X0.1CM;

Dr. Soni (PW31) has stated that no conclusive opinion can be drawn even after second autopsy.

14. Analyzing the above medical evidence, factual position is as follows :

(i). All injuries found on the dead body of deceased are simple in nature;

(ii). No injury was found on the vital part of the body of deceased; Postmortem conducted two times by the medical board consisting of panel of doctors even then no definite opinion could be given that the deceased died due to sustained injuries.

(iii). The doctors who conducted Postmortem opined that the deceased was suffering from tuberculosis which was in advance stage and died due to bleeding from lung resulting in failure of heart and respiratory system.

(iv). FSL report is not filed by the prosecution to find out proper reason of death of deceased.

15. From the above scrutiny of evidence, it is abundantly clear that the injuries sustained by deceased Pragi were all on non-vital parts of his body. In the above situation, it cannot be presumed that the deceased died due to simple abrasions and contusions sustained on forearm, knee, elbow finger and left leg etc. These injuries sustained by the deceased are apparently not sufficient to cause death in normal course of nature. So medical evidence does not disclose that the death of deceased was due to sustained injuries.

16. It is admitted fact that on the date of incident, there was free fight between complainant party and the appellants-accused. It is alleged that the appellants have also sustained injuries and they have also filed complaint at police station. Virendra Kumar (PW7) has stated that the case under Section 147, 148, 149 and 323 of IPC and under Section 3 (1) (10) of SC ST Act was registered against complainant party on the report of appellant-accused Hakim Singh. So in that free fight, if deceased Pragi sustained simple injuries, it cannot be presumed that the appellants-accused assaulted Pragi with knowledge that their act may cause his death or may cause such bodily injury as is likely to cause his death. So offence under Section 304 Part II of IPC is not made out against appellants-accused.

17. So far as conviction of appellants-accused under Section 148, 325/149 (Four counts) and 323/149 (Three counts) of Indian Penal Code is concerned, finding of trial court in this respect is affirmed as not challenged. It is submitted on behalf of learned counsel for the appellants-accused that the appellants are in custody since more than Six months. Trial is pending since the year 1999. They are regularly appearing before the trial court. Therefore, a lenient view is to be taken and they be released on the sentence which they have already undergone.

18. Considering the facts and circumstances of the case, this appeal is partly

allowed. Conviction of appellants-accused under section 304 Part II/149 of IPC is set-aside. Their conviction under Section 148, 325/149 (four counts) and 323/149 (three counts) is affirmed. Their jail sentence is reduced. They are sentenced to the period already undergone by them in confinement. Fine amount imposed under Section 325/149 (four counts) is enhanced from Rs.100/- to Rs.7000/- each. This amount is to be deposited in addition to the amount already deposited by them. In lieu of payment of fine, appellants-accused have to undergo Six months RI. Fine awarded under other sections shall remain as it is.

Appeal partly allowed.

I.L.R. [2008] M. P., 3345
CRIMINAL REVISION
Before Mr. Justice B.M. Gupta
4 November, 2008*

SANGEETA SHARMA SMT. (DR.) ... Applicant
Vs.
STATE OF M.P. & anr. ... Non-applicants

Criminal Procedure Code, 1973 (2 of 1974), Section 173(2) - *Natural Justice - Complainant not heard before accepting the Final Report and not taking cognizance of the offence - Held - A report u/s 173(2) of Cr.P.C. is submitted to a Magistrate by I.O. - Magistrate chooses not to take cognizance of offence or drop the proceedings against the accused or accused persons mentioned in F.I.R. - It is obligatory for Magistrate to provide an opportunity of hearing by issuance of notice to the complainant - Admittedly, the aforesaid opportunity has not been provided - The complainant who moves the criminal law into motion is entitled to know its result.* (Para 6)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 173(2) – नैसर्गिक न्याय – अंतिम रिपोर्ट स्वीकार करने और अपराध का संज्ञान न लेने के पूर्व परिवादी को नही सुना गया – अभिनिर्धारित – अनुसंधानकर्ता अधिकारी द्वारा मजिस्ट्रेट को द.प्र.सं. की धारा 173(2) के अन्तर्गत रिपोर्ट पेश की – मजिस्ट्रेट अपराध का संज्ञान न लेने का चयन करता है या एफ.आई.आर. में उल्लिखित अभियुक्त या अभियुक्त व्यक्तियों के विरुद्ध कार्यवाहियाँ समाप्त करता है – मजिस्ट्रेट के लिए यह अनिवार्य है कि परिवादी को सूचनापत्र जारी करके सुनवाई का अवसर प्रदान करे – स्वीकृत रूप से उपरोक्त अवसर प्रदान नही किया गया – परिवादी, जो दाण्डिक विधि के अन्तर्गत कार्यवाही प्रस्तावित करता है, उसका परिणाम जानने का हकदार है।

Case referred :

AIR 1995 SC 1285.

Arun Pateria, for the applicant.
C.S. Dixit, P.P., for the non-applicant No.1/State.
Shailendra Singh, for the non-applicant No.2.

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*Cr.R. No.469/2006 (Gwalior)

ORDER

B.M. GUPTA, J. :–This Revision has been preferred by the petitioner/ complainant Dr.Smt.Sangeeta Sharma, impugning the order dated 27th September 1995 passed by Additional Chief Judicial Magistrate, Gwalior on F.R. Filed by Manila Police Gwalior in Crime No.6/94 registered against respondent No.2 Umendra Mohan Sharma on the FIR lodged by the applicant (upon perusal of the original order, the date of the order is not clear, it may be 21st September or 27th September 1995, but as agreed to by both the parties, the aforementioned date has been accepted.).

2. The facts in brief as agreed to by both the parties are that the petitioner, who is the wife of respondent No.2, has lodged one written FIR against her husband, respondent No.2, on which the aforementioned crime was registered for the offence punishable under Section 498-A IPC and Section 3/4 of the Dowry Prohibition Act, 1961. After the investigation, F.R. No.1 of 14th January 1995 was submitted by the Investigating Officer before the learned Magistrate with the following report :-

"घटना का संक्षिप्त विवरण"

प्रकरण में फरियादी डॉ 0 संगीता शर्मा ने अपने ससुराल के लोगों के विरूद्ध रिपोर्ट की थी जिसका अपराध कमांक 6/94 धारा 498 (ए) एफ. आर. 3/4 दहेज प्रतिषेध अधिनियम पंजीबद्ध किया गया। चूंकि फरियादिया संगीता शर्मा का अपने पति डॉ0 उपेन्द्र मोहन शर्मा से राजी नामा हो गया है और वह इस सम्बंध में उच्च अधिकारियों द्वारा भी जांच की गई है । प्रकरण में उच्च अधिकारियों ने राय दी है कि प्रकरण में एफ.आर. कता की जावे । अतः एफ. आर. 01/14.1.95 की गई ।"

On the report itself and not on a separate order sheet, the following impugned order has been passed by the learned Magistrate by hand :-

"अंतिम प्रतिवेदन

पुलिस अधीक्षक ग्वालियर द्वारा एफ. आर. स्वीकृत हेतु प्राप्त केस डायरी के अवलोकन से स्पष्ट होता है कि उप पुलिस महानिरीक्षक भोपाल द्वारा एफ.आर. हेतु प्रकरण भेजा गया है तथा पुलिस अधीक्षक द्वारा स्वीकृत की गयी है । डायरी में फरियादिया का अभियुक्त से राजीनामा होने का शपथ पत्र एवं जिला न्यायालय भोपाल के आदेश दिनांक 29.09.94 के अनुसार राजीनामा उभयपक्ष के मध्य किया गया है । उक्त स्थिति में एफ. आर. स्वीकृत किया गया।"

3. During arguments, Shri Pateria, learned counsel for the petitioner has assailed the impugned order on the ground that the petitioner, who is the complainant in the case was not heard before accepting the F.R. which was mandatory for the learned Magistrate. In support he has drawn attention at the judgment of the Apex Court in the case of *Bhagwant Singh Vs. Commissioner of Police and another* reported in AIR 1995 SC 1285. Although nothing has been mentioned in the Revision Petition, yet Shri Pateria, Advocate on behalf of the petitioenr has disputed the correctness of the affidavit and the order sheet of the court as referred in the order.

4. On behalf of the respondents, Shri C.S.Dixit, learned P.P. for the State and Shri Shailendra Singh, learned counsel for the respondent No.2 have jointly submitted that the affidavit filed by the petitioner and the order sheet is genuine and on the basis of these documents, as is apparent from the impugned order, being satisfied with the fact of compromise, the learned Magistrate has passed the order and accepted the FR. In such circumstances, there was no necessity of providing further opportunity of hearing to the petitioner. However, it is admitted by them that when the F.R. was presented before the learned Magistrate, no opportunity of hearing was provided to the petitioner by him.

5. The following observation of the Apex Court in para 4 of the aforementioned judgment appears relevant to be quoted in the case, which goes as under :-

> "4. .....There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2) (i) of S.173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub sec.(2)(i) of S.173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.....".

6. As observed by the Apex Court, when a report under Section 173 (2) of the Cr.P.C. is submitted to a Magistrate by the Investigating Officer and the Magistrate chooses not to take cognizance of offence or drop the proceedings against the accused or accused persons mentioned in the FIR, it is obligatory for him to provide an opportunity of hearing by issuance of the notice to the complainant. Admittedly, in the instant case, the aforesaid opportunity has not been provided. The documents referred in the impugned order included in the cases diary are genuine or not, no opinion is required to be given by this Court at this stage as the same will require recording of evidence and also for decision of this revision, that appears not necessary. The observation of the Apex Court is based on the principle of natural justice. The complainant who moves the criminal law into motion is entitled to know its result. Despite the fact that the case diary papers including the affidavit etc. indicate the willingness of the complainant, if the result of investigation goes against him/her, before approving the same the Magistrate is required to provide an opportunity of hearing to such complainant. As no such opportunity of hearing has been given in the case, hence the order appears erroneous and deserves to be set aside.

7. Consequently, the revision is allowed. The impugned order is set aside. It is directed that the learned Magistrate shall provide an opportunity of hearing to the petitioner and then pass the order on F.R. submitted by the Investigating Officer before him. Petitioner is directed to appear before the learned Magistrate on 29/11/2008 for seeking further directions in compliance of this order.

Revision allowed.

I.L.R. [2008] M. P., 3348

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice R.S. Garg

19 August, 2008*

LALIT SUGANDHI ... Applicant

Vs.

MAHENDRA KUMAR SUGANDHI & anr. ... Non-applicants

A. Criminal Procedure Code, 1973 (2 of 1974), Sections 156(3) & 190 - *Difference of powers exercisable u/s 156(3) and Section 190 - Opportunity of hearing to accused - There is a patent difference between the powers exercisable u/s 156(3) and Section 190 of the Code - Accused has no right of hearing before the magistrate issues an order u/s 156(3) of Code - If the police submits a report in favour of accused either in relation to all charges or some charges - Then the complainant would always have a right to file a protest petition and submit to the magistrate that the protest petition filed by the complainant in so far as it relates to all or some of the offences (alleged in complaint) should be treated as private complaint - Court should take cognizance u/s 190 of Code and proceed u/s 200 of Code.* (Para 19)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 156(3) व 190 – धारा 156(3) व धारा 190 के अधीन प्रयोग की जा सकने वाली शक्तियों का अंतर – अभियुक्त को सुनवाई का अवसर – संहिता की धारा 156(3) व धारा 190 के अधीन प्रयोग की जा सकने वाली शक्तियों में प्रत्यक्ष अंतर है – मजिस्ट्रेट द्वारा संहिता की धारा 156(3) के अधीन आदेश जारी करने के पूर्व अभियुक्त को सुनवाई का कोई अधिकार नही है – यदि पुलिस सभी या कुछ आरोपों के सम्बन्ध में अभियुक्त के पक्ष में रिपोर्ट पेश करती है – तब सदैव परिवादी को अभ्यापत्ति याचिका पेश करने और मजिस्ट्रेट के समक्ष यह निवेदन करने का अधिकार होगा कि परिवादी द्वारा पेश अभ्यापत्ति याचिका, जहाँ तक उसका सम्बन्ध सभी या कुछ अपराधों (परिवाद में अभिकथित अपराध) से है, को प्राइवेट परिवाद की तरह माना जाना चाहिए – न्यायालय को संहिता की धारा 190 के अधीन संज्ञान लेकर धारा 200 के अधीन कार्यवाही करने के लिए अग्रसर होना चाहिए।

B. Criminal Procedure Code, 1973 (2 of 1974), Sections 156(3) & 190 - *Once a complaint is filed and magistrate finds that a cognizable offence has been committed by the alleged accused person - Then instead of taking*

*M.Cr.C. No.5075/2006 (Indore)

cognizance u/s 190 of the Code magistrate can direct the police to make investigation - If the police finds that the person has committed an offence then it may file a charge-sheet/Challan against the named accused and in case the police finds that no offence is made out, it can submit such report. (Para 11)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 156(3) व 190 – जब एक बार परिवाद पेश किया जाता है और मजिस्ट्रेट यह पाता है कि कथित अभियुक्त व्यक्ति द्वारा संज्ञेय अपराध किया गया है – तब मजिस्ट्रेट संहिता की धारा 190 के अधीन संज्ञान लेने के बजाय पुलिस को अनुसंधान करने के लिए निदेश दे सकता है – यदि पुलिस यह पाती है कि व्यक्ति ने अपराध किया है तब वह बताये गये अभियुक्त के विरुद्ध आरोप–पत्र/चालान पेश कर सकती है और यदि पुलिस यह पाती है कि कोई अपराध नही बनता, वह ऐसी रिपोर्ट पेश कर सकती है।

Case referred :

(2006) 1 SCC 627.

Rahul Sethi, for the applicant.

None, for the non-applicants.

JUDGMENT

R.S. GARG, J. :–The short facts necessary for disposal of the present petition are that the non-applicant No. I Mahendra Kumar filed a private complaint/a complaint under Section 190 of the Code of Criminal Procedure on 16.2.2006 against the applicant for the alleged offences punishable under Sections 406, 420 and 500 of the Indian Penal Code.

2. On 16.2.2006, the non-applicant/complainant also filed an application under Section 156{3} of Cr.P.C before the learned Judicial Magistrate First Class and on the said application, the learned Trial Court directed the concerned Police to make an enquiry/investigation into the offence.

3. According to the applicant, the concerned Police of Police Station M.G .Road started investigation in the matter and thereafter submitted the report dated 11.5.2006 before the learned Trial Court. On 3.8.2006, the learned Judicial Magistrate First Class observed that on basis of the complaint and the documents, an offence punishable under Section 420 of Indian Penal Code is positively made out. The Court below accordingly directed the Police to make further investigation and file a Chalan and simultaneously directed that the matter be consigned to the record room.

4. Being aggrieved by the said order dated 3.8.2006 and the earlier order dated 16.2.2006, the applicant has filed this petition submitting interalia that the Court below acted without jurisdiction and contrary to the provisions contained in Section 156, Section 190 and Section 200 of the Code of Criminal Procedure.

5. Learned counsel for the applicant submitted that a perusal of Section 156 read with Section 190 of the Code would make it clear that in a private complaint, the Magistrate is obliged and required to examine the witnesses and in case he records his prima-facie satisfaction then he can either direct the Police to make

investigation under Section 156{3} of the Code or may direct the complainant to produce his witnesses and ultimately may register a case. It is also submitted that the Magistrate without taking cognizance in the matter could not refer the matter to the Police. It is also submitted that before a direction under Section 156{3} of the Code was issued, the Court was obliged to hear the accused because the directions so issued by the Court were to adversely affect the rights of the accused.

6. For proper appreciation of the argument, I am required to refer to Section 156, Section 190 and Section 200 of the Code. The said Sections read as under:-

> **"156, Police Officer's power to investigate cognizable case** -{1} Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
>
> {2} No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.
>
> {3} Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.
>
> **190.Cognizance of offences by Magistrates** -{1} Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section {2}, may take cognizance of any offence -
>
> {a} upon receiving a complaint of facts which constitute such offence;
>
> {b} upon a police report of such facts;
>
> {c} upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.
>
> {2} The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section {1} of such offences as are within his competence to inquire into or try.
>
> **200. Examination of complainant** - A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:
>
> Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses -
>
> {a} if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

{b} if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."

Section 190 provides that a Magistrate of First Class may take cognizance of any offence upon receiving a complaint of facts which constitutes such offence, he may take cognizance of offence upon a police report of such facts and/or he may take cognizance of any offence upon information received from any person other than a Police Officer, or upon his own knowledge that such offence is committed. Section 190 is in contra-indication of Section 156 of the Code. Section 156 relates to the powers of the investigation and a direction, which can be issued by a competent Court to the Police to take up the matter for investigation. For exercising the powers under Section 156, a Court is not required nor shall it take cognizance of the matter because once the Court takes cognizance under Section 190 of the Code of Criminal Procedure on a complaint not based upon the police Chalan then the Court has to proceed under Section 200 of the Code. Section 156 clearly provides that any Officer-In-Charge of a Police Station may, without the orders of Magistrate, investigate any cognizable case and the proceedings of such a Police Officer shall not be called in question on the ground that the case was one which such officer was not empowered under Section 156 to investigate. That is one power of the Police to make investigations into the allegations made by a complainant on which a First Information Report is registered. Section 156{3} has nothing to do with the powers of the Police Officers, It clothes a Judicial Magistrate First Class, who is empowered under Section 190 to make investigation into the alleged offence.

7. The empowerment referred to in Section 156{3} of the Code has nothing to do with taking of the cognizance. The empowerment is in relation to the authority of the concerned Magistrate to take cognizance of the case. If it is prima-facie found that a Magistrate is competent to take cognizance of the matter then he certainly would be empowered under Section 190 and that empowerment would provide him a foundation under Section 156{3} of the Code to direct for an investigation into the allegations made before him in a complaint coupled with an application under Section 156{3} of the Code.

8. The moment a Magistrate takes cognizance under Section 190 then it would be clear that the Court has taken cognizance upon receiving a complaint or upon a police report of such facts or upon information received from any person other than a Police Officer or upon the personal knowledge of the Magistrate. The moment cognizance is taken, it will be presumed that either there is a complaint before the Court or there is a police report/chalan before the Court or some information has been received from some person not a Police Officer or upon the personal knowledge of the Judge/Magistrate. If the argument of the learned counsel

is accepted, it will put the cart before the horse. On one side, the Magistrate would take cognizance of the offence and at the same time, he would be directing investigation. If he has already taken the cognizance, he would not be entitled to direct investigation under Section 156 {3} of the Code.

9. It was contended that if the complaint is filed under Section 190 of the Code of Criminal Procedure and the Magistrate has taken cognizance then the procedure as required under Section 200 of the Code is required to be observed.

10. So far as the submission simplicitor is concerned, it has to be accepted as a proposition of law. The moment a Magistrate takes cognizance of an offence on basis of a complaint made by a person other than a Police Officer or upon receiving a complaint then he-has to proceed in accordance with Section 200 of the Code of Criminal Procedure.

11. The question before me is that whether before taking cognizance, can a Magistrate exercise his powers under Section 156 {3} of the Code of Criminal Procedure. The scheme of the Code prima-facie appears to be that once a complaint is filed and the Magistrate finds that a cognizable offence has been committed by the alleged accused person then instead of taking cognizance under Section 190 of the Code, he can direct the Police to make investigation and if the Police finds that the person has committed an offence then it may file a charge-sheet/chalan against the named accused and in case the police finds that no offence is made out, it can submit such a report.

12. According to the learned counsel for the applicant, in the present case, when the report was favouring the accused then the Court could not issue a further direction under Section 156{3} of the Code of Criminal Procedure to register an offence without hearing the applicant.

13. In my opinion, the argument submitted by learned counsel for the applicant runs contrary to the scheme of the Code. If the argument is to be accepted then somebody can raise an objection that before the Police registers an offence, the Police is required and obliged to hear the accused. Such a right is not conferred upon the accused if the investigation is made by the Police.

14. In the present case, when an application under Section 156 {3} of the Code of Criminal Procedure is filed then the accused would not be entitled to say .that before directing the Police to proceed for investigation, the accused should have been heard by the Court entertaining the application under Section 156{3} of the Code of Criminal Procedure.

15. An accused in the scheme of the Code is entitled to be heard only after the charge-sheet is filed or the process is issued against him. The moment a Court issues a direction to the accused to appear before him and contest the application filed under Section 156{3} of the Code then the Magistrate would be taking cognizance of the offence and would be making an enquiry by himself. Such procedure is not applicable to an application filed under Section 156{3} of the

Code. An accused is not required to be heard before issuance of a direction under section 156{3} of the Code.

16. In the matter of *Mohammad Yousuf Versus Afaq Jahan {Smt} & Another* {2006} I SCC 627, the Supreme Court while considering the scope of Sections 100, 156{3}, 173 & 202 of the Code of Criminal Procedure has observed as under:-

> "Chapter XII of the Code contains provisions relating to "information to the police and their powers to investigate", where as Chapter XV, which contains Section 202, deals with provisions relating to the steps which a Magistrate has to adopt while and after taking cognizance of any offence on a complaint. Provisions of the above two chapters deal with two different facets altogether, though there could be a common factor i.e. complaint filed by a person. Section 156, falling within Chapter XII deals with powers of the police officers to investigate cognizable offences. True, Section 202, which falls under Chapter XV, also refers to the power of a Magistrate to "direct an investigation by a police officer". But the investigation envisaged in Section 202 is different from the investigation contemplated in Section 156 of the Code.
>
> The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 Cr.P.C. The investigation contemplated in Chapter XII can be commenced by the police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under Section 156 { 3}, it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 Cr.P.C. But the significant point to be noticed is, when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence.
>
> But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV Cr.P.C. A reading of Section 202{1} Cr.P.C makes the position clear that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This is because he has already taken cognizance of the offence disclosed in the complaint, and the domain of the case would thereafter vest with him.
>
> Any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156{3} Cr.P.C. But if he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the

police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station. Even if a Magistrate does not say in so many words while directing investigation under Section 156{3} Cr.P.C that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII Cr.P.C only thereafter."

17. It was lastly submitted that the learned Court below was unjustified in directing registration of the offence on the report submitted by the Police. In my opinion, the said argument is to be rejected being misconceived. If the Police files a report favouring the accused or showing that the dispute was of civil nature then too the complainant would be entitled to submit before the Court that the police report is not correct and that the Court should proceed further in the matter.

18. In the present matter, it clearly appears that the Court, after going through the allegations made in the complaint and the documents annexed with it and on going through the police report, was of prima-facie opinion that an offence punishable under Section 420 of Indian Penal Code is made out. If the complainant party is still aggrieved by the said direction then they were entitled to file a protest petition and submit before the Magistrate that the police report was wrong, illegal and contrary to the records and their private complaint for prosecution of the accused for other offence should be tried separately. However, in the present case, it appears that the complainant side was satisfied with a direction made by the learned Judicial Magistrate First Class.

19. Taking into consideration the totality of the circumstances, I must hold that there is a patent difference between the powers exercisable under Section 156{3} and Section 190 of the Code of Criminal Procedure. I must hold that the accused has no right of hearing before the Magistrate issues an order under Section 156 {3} of the Code. I also make it clear that if the police submits a report in favour of the accused either in relation to all charges or some charges then the complainant side would always have a right to file a protest petition and submit to the Magistrate that the protest petition filed by the complainant party insofar as it relates to all or some of the offences should be treated as a private complaint and the Court should take cognizance under Section 190 of the Code of Criminal Procedure and proceed under Section 200 of the Code of Criminal Procedure.

20. I find no reason to interfere. The petition is dismissed.

Petition dismissed.

I.L.R. [2008] M. P., 3355
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice P.K. Jaiswal
24 September, 2008*

GIRRAJ PATWA ... Applicant
Vs.
DAYARAM ... Non-applicant

A. Criminal Procedure Code, 1973 (2 of 1974), Sections 239, 245 & 258, Negotiable Instruments Act, 1881, Section 138 - *Applicability of Sections 239, 245 & 258 of Code in complaint u/s 138 N.I. Act* - *Applicant filed complaint u/s 138 of Act - N.A. filed an application u/s 245 of Code for dismissal of complaint as it being barred by limitation - Magistrate allowed the application and dismissed the complaint as time barred - Order challenged in High Court u/s 482 of Code - Held - Present complaint is a summon case - Provisions of Sections 239 & 245 of Code are applicable in warrant cases - Though the provisions of Section 258 of Code are applicable in summons cases but only in those summons cases which are instituted otherwise than upon complaint - Magistrate has committed error in allowing the application u/s 245 of Code - Petition allowed.* (Para 9)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 239, 245 व 258, परक्राम्य लिखत अधिनियम, 1881, धारा 138 – परक्राम्य लिखत अधिनियम की धारा 138 के अन्तर्गत परिवाद में संहिता की धारा 239, 245 व 258 का लागू होना – आवेदक ने अधिनियम की धारा 138 के अन्तर्गत परिवाद पेश किया – अनावेदक ने परिवाद की खारिजी के लिए संहिता की धारा 245 के अन्तर्गत आवेदन पेश किया कि वह परिसीमा से वर्जित था – मजिस्ट्रेट ने आवेदन मंजूर किया और परिवाद समय वर्जित होने से खारिज किया – आदेश को संहिता की धारा 482 के अन्तर्गत उच्च न्यायालय में चुनौती दी गई – अभिनिर्धारित – वर्तमान परिवाद एक समन मामला है – संहिता की धारा 239 व 245 के उपबंध वारंट मामलों में लागू होते हैं – यद्यपि संहिता की धारा 258 के उपबंध समन मामलों में लागू होते हैं किन्तु केवल उन समन मामलों में जो परिवाद से भिन्न आधार पर संस्थित किये जाते हैं – मजिस्ट्रेट ने संहिता की धारा 245 के अन्तर्गत आवेदन मंजूर करने में त्रुटि की – याचिका मंजूर।

B. Negotiable Instruments Act (26 of 1881), Sections 138 & 142 - *Delay - Condonation* - *Magistrate is empowered to condone the delay as per proviso to clause (b) of Section 142 of the Act, which came into force on 06.02.2003.* (Para 11)

ख. परक्राम्य लिखत अधिनियम (1881 का 26), धाराएँ 138 व 142 – विलम्ब – माफी – मजिस्ट्रेट अधिनियम की धारा 142 के खण्ड (बी) के परन्तुक, जो तारीख 06.02.2003 को प्रवृत्त हुआ, के अनुसार विलम्ब माफ करने के लिए सक्षम है।

Cases referred :
(2004) 7 SCC 338, 2002(1) MPLJ 243 MP.

*M.Cr.C. No.5504/2007 (Gwalior)

Amit Lahoti, for the applicant.
H.K. Shukla, for the non-applicant.

ORDER

P.K. JAISWAL, J. :–Heard. Petitioner in this petition challenging the order dated 30.7.07 passed by the JMFC, Raghogarh, District Guna, in Criminal Case No.323/07, whereby the learned JMFC allowed the application filed by the respondent under Section 245, Cr.P.C. and dismissed the private complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (for short the "NI Act"), as barred by limitation.

2. Brief facts of the case are that on 23.9.06, the respondent issued a cheque of Rs.30,000/- to the petitioner. On 2.12.06, the petitioner presented the said cheque for encashment, which was dishonoured and the cheque has been returned unpaid to the petitioner alongwith a memo that for want of sufficient fund, the cheque has been dishonoured. The petitioner on 15.12.06 issued notice under Section 138(1) of NI Act to the respondent, which was received by the respondent on 15.12.06. The cause of action for filing the complaint arose on 31.12.06 and petitioner can file a complaint within a period of 30 days from the date of receipt of notice by the respondent. After receipt of notice, the respondent came to the petitioner and stated that he will pay the amount of Rs.30,000/- on or before 15.3.07. In view of the above assurance given by the respondent, the petitioner could not file the complaint in time, i.e., upto 29.1.07 and when the amount was not paid by 15.3.07, the petitioner filed a complaint on 11.4.07. The above stated facts are mentioned in Para 4 and 5 of the complaint. Learned Magistrate took cognizance and issued notice to the respondent.

3. The respondent after receipt of the notice filed an application under Section 245 (2), Cr.P.C. on the ground that the cheque was dishonoured on 2.12.06 and thereafter first notice was issued on 15.12.06, which was received by the respondent on 15.12.06 itself, but no complaint was filed within the period, i.e., upto 29.1.07 and thereafter second notice dt. 15.3.07 was issued on 26.3.07 and complaint was filed on 11.4.07. Hence, the complaint was not filed within time from the date of receipt of notice and the complaint filed by the petitioner is barred by time.

4. The petitioner filed his reply and very specifically stated therein that the complaint has been lodged on the basis of first notice which was issued on 15.12.06 and he explained the delay for not filing the complaint for the period from 29.1.07 to 11.4.07.

5. Trial Court by the impugned order dated 30.7.07 allowed the application and dismissed the complaint as barred by limitation.

6. Learned counsel for the petitioner submitted that Chapter XIX of the Code of Criminal Procedure deals with trial of warrant-cases by Magistrates. The

provision of section 239 of the Code are applicable only to warrant cases. Criminal case under Section 138 of NI Act, for dishonour of cheque is a summons case. Section 239, Cr.P.C. would not apply (See (2002) I MPLJ 243 (MP)). Chapter XX deals with trial of summons-cases by Magistrates. Chapter XX does not make any provision for discharge of the accused, but section 258 very clearly specifies that at any stage of the trial, the Magistrate may stop the proceedings. In a summary trial, the procedure prescribed for summons-case has to be followed, the accused can be discharged under Section 258, Cr.P.C. Chapter XX does not empower the JMFC to review its own order and the present application filed by the respondent under Section 245, Cr.P.C. is not maintainable and the learned Magistrate has committed an error in allowing the same and dismissing the complaint.

7. Learned counsel for the respondent drew my attention to the provisions of Sections 239 and 245, Cr.P.C. and submitted that the application filed by the respondent is not an application for review. The respondent after receipt of the summons from the trial Court brought certain facts to the knowledge of the trial Court. The learned trial Court considered the same and dismissed the complaint as barred by limitation by the impugned order dated 30.7.07. He further submitted that under Section 245, Cr.P.C., the learned Magistrate is empowered to decide the application and discharge the respondent.

8. Section 239 and 258 of the Code of Criminal Procedure reads as under :-

> **"239. When accused shall be discharged.-** If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.
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> **258. Power to stop proceedings in certain cases. -** In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, an in any other case, release the accused, and such release shall have the effect of discharge."

9. A mere reading of Criminal Procedure Code indicates that the provisions of this section are application for the trial of warrant cases by Magistrates. Undisputedly, the criminal cases registered against the respondent is summon case and therefore the provisions of section 239 Cr.P.C. do not attract in the present

case pending against the respondent. It is also clear from the perusal of section 258 Cr.P.C. that though the provisions of section 258 Cr.P.C. are applicable in summons cases but only in those summons cases which are instituted otherwise than upon complaints. Undoubtedly, the present criminal case has been instituted upon complaint filed by the petitioner. It is, therefore, abundantly clear that the provisions of these two sections do not apply in the present criminal case and therefore the learned Magistrate has committed error in allowing the application filed by the respondent under section 245 of Cr.P.C.

10. The Hon'ble Apex Court in the case of *Adalat Prasad v. Rooplal Jindal and others* (2004) 7 SCC 338 has held that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provisions of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203, Cr.P.C, because the Code does not contemplate a review of an order. Hence, in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482, Cr.P.C.

11. Here in the present case notice was issued in time on 15.12.06. Clause (c) of proviso to Section 138 provides that the Section shall not apply unless the drawer of the cheque fails to make payment within 15 days of the receipt of the said notice. The respondent failed to pay the amount within 15 days and gave an assurance for payment of the amount upto 15.3.07. The petitioner waited for the said period filed the complaint on 2.11.07 and assigned reasons in Para 4 and 5 of the complaint for condonation of delay as to why the petitioner has not filed the complaint within the stipulated time. The learned Magistrate is empowered to condone the delay as per Proviso to clause (b) of Section 142 of the NI Act, which came into force on 6.2.2003.

12. Thus, for the above mentioned reasons, I am of the considered view that the learned JMFC abused the process of law in allowing the application filed by the respondent under Section 245, Cr.P.C. and committed legal error in rejecting the complaint. The impugned order is not sustainable and is accordingly set aside. This application under Section 482, Cr.P.C. is allowed. The respondent is at liberty to raise the question of limitation and it is open to respondent to prove at trial before the trial Court, who will decide it in accordance with law. With the aforesaid, this petition is disposed of.

Petition disposed of.
